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The New York Times: Tired of Plastic? These Businesses Have Ideas for You

The coronavirus pandemic and fears about its spread have brought to a screeching halt years of efforts to get Americans to do one small thing: bring their own bags to the grocery store and stop using plastic ones.

The Buffalo News: Western New York on track to reopen hair salons, stores and offices on June 2

Western New York is on track to reopen hair salons, retail stores and offices as early as June 2, Lt. Gov. Kathy Hochul said Tuesday – so long as a rash of reported Memorial Day gatherings don’t spike the region’s falling Covid-19 rates.

Newsday: Officials: Long-delayed soil cleanup at Bethpage ballfield closer to start

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Queens Courier: Pandemic forces city to remove residents from controversial Rockaway Park homeless shelter

All of the men who had been staying at a controversial homeless shelter in Rockaway Park were relocated to a commercial hotel Friday amid the COVID-19 pandemic.

Trentonian: NJ DEP's McCabe to council: You gave us 'no choice' but to sue Trenton Water Works

Catherine McCabe called council's bluff and raised them one.

InsideEPA.com: Ewire: New York cites climate law, toxics to reject pipeline permit

New York is citing its sweeping climate change law as one reason it is rejecting a key permit for a planned natural gas pipeline that would supply Long Island, in addition to concerns about water quality harms that could be caused by the project's construction.

InsideEPA.com: Ewire: Wheeler criticizes Chesapeake Bay lawsuit threats

EPA chief Andrew Wheeler sharply criticized a threatened lawsuit over the multi-state Chesapeake Bay cleanup from states and environmentalists during his appearance before the Senate Environment & Public Works (EPW) Committee yesterday, arguing that it is far too early to be going to court over the issue.

InsideEPA.com: Interstate Air Ruling May Signal High Hurdle For New York's Ozone Lawsuit

A recent appellate ruling largely upholding EPA's rejection of a petition by Maryland and Delaware seeking direct federal regulation of emissions from sources in upwind states may set a high hurdle for New York in a similar suit -- and more broadly for East Coast states that are relying on the agency's help to reduce interstate ozone transport.

Queens Courier: After Cuomo's veto, Queens lawmakers will reintroduce measure to protect Jamaica Bay

Jamaica Bay is flourishing with the cleanest water in decades, drawing marine life including a humpback whale and a new seal population, and two Queens lawmakers are refusing to allow that trajectory to change.

NATIONAL

Bloomberg Law: EPA's Biggest Union Pushes Back Against Agency's Reopening Plans

E&E News: States lead court fight against Trump. They're winning

E&E News: Union to Wheeler: 'No justification' for reopening plans

National Law Review: EPA Proposes Landmark Rule Setting General Requirements and Procedures for Guidance Documents

Energy.AgWired: Ethanol and Oil State Senators Compete for EPA Help

The Fence Post: GOP senators urge Wheeler to waive or reduce RFS requirements

Daily American: USDA SECURE rule paves way for agricultural innovation

Inside EPA: Top Toxics Official Expects EPA To 'Tailor' First TSCA Management Rules

E&E News: EPA settles with railway over lead concerns

E&E News: Appeals court won't dismiss landmark wetlands case

E&E News: Colo. sues over WOTUS rewrite that 'ignores sound science'

Bloomberg: What's at Stake in EPA's MATS Finding Reversal

The Hill: Automakers fight effort to freeze fuel efficiency standards

Public News Service: Communities of Color Called Most At Risk from EPA's Air Stance

Public News Service: EPA Won't Tighten Air Standards; Experts Warn of Health Issues

[Truth Out: Trump's EPA Wants to Weaken Science-Based Rules for Toxic Air Pollutants](#)

[Chemical Watch: US EPA opens consultation on isothiazolinones draft review](#)

[FORBES: The World's Biggest Green Hydrogen Plant Is Planned For California. Its Prospects For Electric Power And Transportation?](#)

[NOLA.com: 'We're screwed': The only question is how quickly Louisiana wetlands will vanish, study says](#)

[The Atlantic: Gina McCarthy's Return to Politics After Obama Tenure](#)

[The Guardian: Climate change in deep oceans could be seven times faster by middle of century, report says | Oceans](#)

[The Hill: Trump anti-reg push likely to end up in court](#)

[HuffPost: As Fishermen Flounder, Trump Clears A Path For Farming The Oceans](#)

[InsideEPAclimate.com: Attorney Seeks Eased EPA Permitting For CCUS As Oil Woes Shift Focus](#)

[NY Times: Virus Crisis Exposes Cascading Weaknesses in U.S. Disaster](#)

[Grist: Pennsylvania regulators promised to keep an eye on polluters during the pandemic. They're struggling.](#)

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KPVI News 6

https://www.kpvi.com/news/national_news/cbf-lawsuit-aims-to-hold-epa-accountable/article_abe7b053-dfbf-53d0-818f-a1d29476626f.html

CBF lawsuit aims to hold EPA accountable

By Connie Connolly

May 27, 2020

In their efforts to restore the Chesapeake Bay and hold northern states accountable for their lagging efforts to pitch in and help, the Chesapeake Bay Foundation “and its partners” filed a notice of intent to sue the federal Environmental Protection Agency.

CBF’s partners in the filing include the Maryland Watermen’s Association; Bobby Whitescarver, a farmer from Swoope, Virginia; and Anne Arundel County.

On May 18, Attorneys General in Maryland, Virginia and the District of Columbia also filed a notice that they also intend to sue EPA for its failure to require Pennsylvania and New York to develop implementation plans that will achieve the 2025 Bay restoration goals.

However, a seafood industry trade association representing Delmarva watermen see the effort as a waste of time and money. Delmarva Fisheries Association announced pressure should be focused on the two northern states rather than on the EPA.

In a press release, the Annapolis-based Chesapeake Bay Foundation, which has an office in Easton, stated the “EPA has failed to uphold its Clean Water Act responsibilities. It has failed to implement the Chesapeake Clean Water Blueprint.”

“This has been ongoing for years, well before the COVID-19 pandemic, and the damage done will last far beyond the pandemic,” CBF President William C. Baker said. “Ensuring the implementation of the Blueprint has been CBF’s top priority for over 10 years. It is essential the courts hold EPA accountable. There is no doubt that if Pennsylvania and New York fail to do their fair share the Bay will never be saved. The EPA will have 60 days to respond before this will be decided in court.”

“The Chesapeake Bay is one of our country’s most valuable natural resources,” said Maryland Attorney General Brian E. Frosh. “Restoring the health of the Bay will take a coordinated, multistate effort with every state sharing the burden. The EPA has abandoned its responsibility to regulate and manage the efforts of the Bay states and together, we fully intend to hold the EPA accountable and not allow it to step away from its regulatory duty.”

“Protecting and restoring the Chesapeake Bay requires a comprehensive effort by each of the watershed states as well as the EPA,” said Virginia Attorney General Mark Herring. “As the administrator of the Chesapeake Bay Agreement, the EPA must treat each of the partners equally and make sure every state is pulling its weight and upholding its portion of the agreement, but instead, the Trump EPA simply rubberstamped plans that are plainly inadequate. I hope we are able to come to an understanding that is beneficial for all parties, while keeping the health of the Bay at the forefront.”

In 2009, CBF sued EPA for its failure to enforce the Clean Water Act and ensure that Bay restoration succeeds.

“The settlement of that lawsuit included the science-based limits established by EPA for pollution fouling the Chesapeake Bay and its rivers and streams,” the CBF release stated. “The states developed individual plans to achieve those limits and committed to two-year milestones that outline the actions they will take to achieve those limits by 2025. And, most importantly, EPA committed to imposing consequences for failure. Together, the limits, plans, milestones, and consequences make up what is known as the Chesapeake Clean Water Blueprint.”

Shortly after the Blueprint was established, the American Farm Bureau Federation and its allies sued EPA in federal court claiming that the pollution limits and plans were illegal. CBF intervened on EPA’s behalf, defending the legality of the Blueprint.

The Blueprint was upheld by a federal court judge in Pennsylvania, who found that the federal/state partnership was legal, calling it an example of the “cooperative federalism” that is called for in the Clean Water Act.

The decision was appealed to the federal Third Circuit Court of Appeals. There, CBF continued to argue that the Blueprint was legal, pointing to the damage done to local communities and businesses that depend on clean water.

The appeals court upheld the Blueprint, again reaffirming EPA’s authority. The court also addressed the requirement that state plans provide ‘reasonable assurance’, saying that EPA’s acceptance of plans without such assurance would be arbitrary and capricious.

The Blueprint opponents asked the U.S. Supreme Court to review the lower court’s decision. The Supreme Court declined, leaving the Third Circuit Court of Appeals ruling to stand.

“The Clean Water Act requires EPA to ensure the states design and implement plans to meet their clean water commitments. After years of failed voluntary efforts, this oversight and accountability is critical,” the CBF release stated.

The Susquehanna River provides roughly half of the Bay's fresh water as well as almost half of the nitrogen pollution.

EPA's recent evaluation of New York's plan noted that the state's nitrogen shortfall exceeded 1 million pounds annually and failed to adequately identify funding sources for meeting agricultural and stormwater commitments.

Pennsylvania's plan to meet the 2025 goals contains improvements over past plans, including prioritized county-level plans. However, as approved by EPA, it would only achieve roughly 73 percent of its 31-million-pound nitrogen-reduction commitment, and the implementation plan is underfunded by nearly \$324 million dollars a year.

"Despite the deficiencies, EPA took no steps to hold either state accountable to their Blueprint obligations," the CBF release stated. "EPA should either have required the states to design plans to fully meet the pollution reduction goals including identifying the necessary funding, or imposed consequences. EPA's acceptance of New York and Pennsylvania's plans last year was a violation of the agency's responsibilities.

"CBF has a long history of working in Pennsylvania to improve local waters and the Bay downstream. The problem in the Commonwealth is not the lack of people and partners on the ground willing to reduce pollution in local waterways," said CBF Pennsylvania Science Policy and Advocacy Director, Harry Campbell. "The problem is that Pennsylvania's elected leaders have not invested sufficient funds to support those efforts. EPA also has an important role to play, working with its federal partners, to provide additional resources to reduce pollution damaging the Commonwealth's rivers and streams."

"After decades of failed commitments, the Blueprint is working. Pollution is down, crabs are rebounding and the dead zone is getting smaller," Baker said. "EPA's failure to hold Pennsylvania and New York accountable undermines the integrity of this historic federal-state partnership. EPA is the enforcer, just as the law requires. It is up to the courts to compel EPA to do its job. Clean water for our children and grandchildren will be the reward."

"While CBF recognizes that the federal government, the states, and communities are now saddled with the additional burden of a pandemic, the long-term benefits to the environment, to public health, and to local economies are inextricably entwined," the CBF release stated. "Compelling EPA to require the states to implement the Blueprint by 2025 will benefit all in the region."

Rob Newberry, executive director of Delmarva Fisheries Association, Inc. which he said represents about 1,600 watermen, wished CBF "good luck with their lawsuit."

"With all the current situations at hand that are going on in the country, it is DFA's opinion that this is neither the time nor the best idea to be entering into this lawsuit," Newberry wrote in an emailed statement. "One of our major concerns is the fact that in all of the plaintiffs' paperwork there is no mention of the major problem of what is behind the Conowingo Dam sediment.

"Being that the sediment always seems to be an issue every time there is a high water level in the Susquehanna River, this should be addressed before or even during the mentioning of this lawsuit," Newberry stated. "DFA understands that there is major effect on the seafood industry of Maryland from these problems from Pennsylvania and New York, but is there a chance that the position the plaintiffs are taking may not have any standing in this matter?"

Although the Maryland Watermen Association is one of the partners that joined with CBF in its lawsuit against the EPA, Newberry said DFA can't support the lawsuit. "Pennsylvania and New York State should be held directly responsible by Maryland," he said. "The EPA should not be used as the scapegoat, for they are not the one polluting the Chesapeake Bay via the Conowingo Dam.

“Pennsylvania and New York should be directly sued, then the EPA could step in to either mitigate or apply the fines as necessary,” Newberry said. “After all, this situation has not been a “red herring,” and now seems to be the “golden goose” for a select few.”

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The New York Times

<https://www.nytimes.com/2020/05/27/climate/plastic-alternative-business.html>

Tired of Plastic? These Businesses Have Ideas for You

Companies are developing alternatives to single-use plastic, and with options including seaweed and mushroom tissue, consumer interest isn't disappearing, even during the coronavirus pandemic.

By Tatiana Schlossberg

May 27, 2020

The [coronavirus pandemic](#) and fears about its spread have brought to a screeching halt years of efforts to get Americans to do one small thing: bring their own bags to the grocery store and stop using plastic ones.

[California has allowed stores to use plastic bags until late June](#) under an executive order from Gov. Gavin Newsom, even though the state has had a plastic-bag ban since 2016. New York [delayed enforcement](#) of its ban until June 15. Other cities and [states](#) have taken [similar steps](#) with [backing from the plastic industry](#), despite evidence that the [virus can survive longer on plastic](#) than on other surfaces (like paper or cloth).

The pandemic came at a time when momentum was building for a shift away from plastic, with many consumers demanding alternatives or halting use of products ([plastic straws](#)) altogether. Although about 72 percent of Americans say they actively try to limit their plastic use, according to a [2019 Pew Research Center survey](#), the amount of plastic waste per person has remained constant: about 4 ounces per person every day, for a total of about 15.6 million tons in 2017.

But to those who are working on alternatives to single-use plastic, the consumer momentum is not disappearing. In fact, founders of several plastic-alternative companies said that they had seen even more interest from consumers in their products, and a renewed commitment from some of the larger companies they work with to press on.

“We’re fortunate enough that we aren’t seeing anyone say, ‘I’m not worried about sustainability, I’m just going to focus on survival right now,’” said Troy Swope, co-founder and chief executive of [Footprint](#), which produces fiber-based alternatives to single-use plastics (cardboard, essentially). “If anything, we’ve seen an acceleration,” he added, since companies often see a boost from using sustainable packaging.

Mr. Swope said that his product, which supplied [food service items at this year’s Super Bowl](#), was different from other fiber-based alternatives in several ways. The most important are a shelf life that is comparable to that of plastic, which helps prevent additional food waste; complete biodegradability and compostability; and the ability to be microwaved, unlike plastic.

Footprint was born of Mr. Swope’s work for 15 years as an engineer at Intel, where he became an “accidental environmentalist.” He saw firsthand the many different elements of plastic packaging that accompanied Intel

products and was stunned by the amount of waste in the shipping and in the supply chain in general. He was even more alarmed that silicon wafers, elements of Intel's processors, were considered contaminated after being transported in plastic that was similar to the tubs of cut fruit from the grocery store.

"We found the same level of contamination on the food that we did on the wafer," he said, adding, "if it's bad for a wafer, it's bad for a human."

Mr. Swope described a trip to Hawaii with Yoke Chung, his Footprint co-founder and colleague at Intel, many years ago where they realized that, because of ocean pollution and climate change, they were going to have to tell their children "what the ocean used to look like."

"So that combination of what we saw happening to the ocean, and the food contamination and, later on, what it was doing to our kids, made us say, 'Let's go do something about it.'"

Ocean plastic in particular has captured the public imagination, and seems to be a jumping-off point for several companies developing plastic alternatives, both in source material and in the pollution they are trying to prevent. One such company is [Notpla](#), which uses seaweed extract to create its plastic alternative.

Notpla's main innovation is a small pouch it calls [Ooho](#), made from seaweed and other plants. This little pod (similar to a detergent pod), which is edible and biodegrades in four to six weeks, is the ideal replacement for single-serving condiment packets, said Pierre Paslier, the company's co-founder and co-chief executive, who used to develop packaging for L'Oréal.

"We use plastic for five minutes, and it ends up in the ocean for 100 years," Mr. Paslier said, explaining the company's interest in providing alternatives to plastic used for on-the-go foods.

Last year, Notpla partnered with Lucozade, a sports drink, to [hand out capsules at an aid station at the London Marathon](#) instead of single-use cups. The company achieved some [moderate internet fame](#) last year when Glenlivet, a Scottish distillery, unveiled whisky cocktails in edible Notpla pouches for a limited period, though seaweed is not a traditional whisky pairing. Notpla has also created a pouch for dry goods and a liner for cardboard food containers, which are often sealed with plastic and cannot be easily recycled or composted.

Different materials can leave consumers confused, and that inspired Zuleyka Strasner to found [Zero](#), a single-use-plastic-free online grocery store. After a trip to a small island off the coast of Nicaragua where the shores were awash in plastic waste, almost none from the island itself, Ms. Strasner decided to try to live plastic-free for a year and a half.

She lugged reusable jars and bags to grocery stores, feeling self-conscious, she said. "I struggled a lot in those 18 months, and I was like, 'Nobody is going to be able to do this; nobody is going to live this lifestyle if they have kids or a full-time job.'"

Like an old-fashioned milkman model "with supercharged technology," Zero Shop drops off groceries in reusable containers — mostly glass and silicone — which are then washed by customers, and picked up with the next delivery.

The company, which currently only serves the Bay Area with plans to expand, offers around 400 items, with everything from fresh produce and meat to chips and popcorn.

Ms. Strasner said that the company, somewhat surprisingly, had grown by about 200 percent week over week during the shutdown, and that consumers had not expressed concern about bringing reusable items into their homes. Fewer people, she said, touch her products than those at a grocery store, given the length of the traditional supply chain, not to mention indecisive shoppers.

Ms. Strasner does not use biodegradable and compostable solutions, favoring more permanent materials like glass and silicone. But decay can be productive, too: Ecovative Design uses mushroom tissue (mycelium) to create a packaging alternative.

Imagine receiving a television set in a box, its corners swaddled in plastic foam. Now, imagine that padding is made of mushrooms.

Ecovative grows packaging by filling custom-shape molds with agricultural residues like wood chips, which act as a food source, and mycelium cells. The mycelium feeds on the wood chips, growing its fibers around and through the food source, and, in four to six days, takes on the shape of the mold, which can then be removed.

Andy Bass, the chief marketing officer of Ecovative, said that the company was mostly “strain-agnostic” when it came to the mushrooms it used to produce its packaging, but that it had also developed its own strains for textiles and plant-based “meats.” Ecovative’s incubators are set to particular temperature and moisture conditions, depending on the strain, which mimic conditions beneath the soil. This way, the mycelium “senses” that it is still underground, and grows only as mycelium fibers (the stalk of the mushroom), rather than as caps. The company has also used this technique to produce mushroom leather.

Ecovative develops its technologies and then licenses them to producers, who can then grow their own mushroom packaging or leather. As a result, it is not a consumer-facing company, so it has been less affected by the pandemic.

However, if the trend of home gardening during the shutdown continues, it could become a bigger part of our pandemic lives than previously thought: Ecovative’s mushroom packaging can be used as fertilizer.

In the end, it all comes full-circle, unless it’s plastic, which isn’t going anywhere.

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The Buffalo News

<https://buffalonews.com/2020/05/26/western-new-york-on-track-to-reopen-hair-salons-stores-and-offices-june-2/>

Western New York on track to reopen hair salons, stores and offices on June 2

By Caitlin Dewey

May 26, 2020 (updated)

Western New York is on track to reopen hair salons, retail stores and offices as early as June 2, Lt. Gov. Kathy Hochul said Tuesday – so long as a rash of reported Memorial Day gatherings don’t spike the region’s falling Covid-19 rates.

Hospitalizations and intensive care unit admissions both declined over the past week, falling to their lowest levels since April 1, according to state Health Department data.

Barring a surge in new cases, Hochul said, that should allow the region to progress to phase two of the state’s four-step reopening process.

"We have reached a significant milestone in our battle against Covid-19 and journey to recovery — which is one week and counting until we hopefully reach the Phase 2 stage of reopening," Hochul said in a statement to The Buffalo News.

"This is the phase most people have been waiting for — more 'open for business' signs that bring more money into the local economy, more people back to work, and finally haircuts will abound," she added. "But all of this must occur with masks, social distancing and disinfecting, or else the next phase could be impacted."

Unlike phase one, which began in Western New York on May 19, there are no specific benchmarks or metrics for progressing into the next three phases of the state-mandated reopening plan.

Instead, an 11-member task force — comprised of Hochul, Erie County Executive Mark Poloncarz and other local officials — need only certify that the region's hospitalization and death rates continue to "trend" in the right direction.

Members meet daily by conference call and evaluate regional data as a three-day moving average over two-week periods. That means incremental, day-to-day changes in Covid-19 case numbers are unlikely to delay the reopening process, especially since hospitalization and intensive care unit counts have, over the past week, consistently fallen.

Erie County and four neighboring counties — Niagara, Allegany, Cattaraugus and Chautauqua counties — are considered as a regional group for reopening purposes.

As of Sunday, there were 164 coronavirus patients hospitalized in the five Western New York counties, down from a peak of 263 on April 29, Poloncarz announced Tuesday. Covid-19 hospitalizations in Erie County alone fell to 149 on Sunday, declining for the fifth straight day. Fewer Covid-19 patients are being treated in intensive care units, as well, and fewer new Covid-19 patients are seeking care at the region's hospitals.

Those are good, if early, signs, said Richard Lipsitz, a member of the regional task force and the president of the WNY Area Labor Federation.

"I feel very positive, but I can't make any predictions," Lipsitz cautioned. "Even if I could make predictions, I wouldn't ... [because] this should be data-driven."

In her remarks Tuesday, Hochul pointed to one major source of uncertainty: Officials do not yet know if gatherings held over Memorial Day weekend will lead to more cases of Covid-19. On social media, dozens of Western New Yorkers complained about nearby parties and picnics; on Sunday, scores of ATV- and motorcycle-riders clustered in dense groups along Niagara Street without face masks.

If the start of phase two is delayed beyond June 2, that will also push back the earliest possible dates for reopening restaurants and food service (currently June 16) and recreation and entertainment venues (currently June 30).

"If you want to see this economy reopen sooner, wear a mask," Hochul said.

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Newsday

<https://www.newsday.com/long-island/environment/grumman-bethpage-pollution-1.44858320>

Officials: Long-delayed soil cleanup at Bethpage ballfield closer to start

By Pual LaRocco

May 26, 2020



The shuttered Bethpage Community Park ballfield, a persistent symbol of Grumman pollution, is inching closer to a long-awaited cleanup.

Final construction of a system to remove contaminants in the soil is set to begin as early as Tuesday, officials said. This month marks 18 years since the field was closed upon discovery of toxic industrial compounds, decades after Grumman had donated the land to Oyster Bay Town.

Activation of a thermal well system, which has sat dormant after the aerospace giant's successor, Northrop Grumman, installed it last year, is expected by July. The machinery to remove pollutants will run for seven to 12 months before regulators determine whether the 3.5-acre area of the park can be returned to public use.

"The public has waited many years to see this up and running," Oyster Bay Town Supervisor Joseph Saladino said in an interview. "We want to make sure that the process is done very completely."

Martin Brand, deputy commissioner of the state Department of Environmental Conservation, which is overseeing cleanup of the park — as well as the larger groundwater contamination plume that stemmed from former Grumman/U.S. Navy operations in Bethpage — said the technology has proved "very effective at permanently removing contaminants" from soil.

Northrop Grumman is paying for the multimillion-dollar ballfield remediation under a decision issued by the state in 2013.

"This project is a critical step in making this community whole again," Brand said in a statement.

Besides volatile organic compounds, such as the carcinogenic solvent trichloroethylene, or TCE, that the wells will extract from the soil, Northrop Grumman also must excavate dirt with toxic metals and polychlorinated biphenyls, known as PCBs. The company will begin staging next week for the final construction phase, Saladino said, noting that the coronavirus pandemic had caused delays in getting some equipment and personnel in place.

But even before the pandemic, town and state approvals of Northrop Grumman's work plans moved slowly. The long-assumed boundaries of the contamination zone also came into question with the discovery last fall of elevated levels of TCE in soil beyond the ballfield area that Grumman, at the peak of its production in the 1940s, '50s and early '60s, had used as its legal dumping grounds for industrial wastes.

Saladino held a news conference in January 2019 to announce "the remediation will soon be getting underway."

"It's taken much too long to get the approvals," said Rep. Thomas Suozzi (D-Glen Cove), who repeatedly has urged the parties to speed cleanup. "Too many things get wrapped up in bureaucracy and lawyers."

In a statement, Northrop Grumman spokesman Tim Paynter said the soil treatment system at the Bethpage Community Park ballfield should be operational by "midsummer."

"Northrop Grumman is achieving another important milestone in our ongoing partnership to address environmental conditions in Bethpage as we begin constructing the next phase of our New York State-approved soil remedy in the Bethpage Park," he said.

The park's former ballfield, overgrown in parts and surrounded by privacy fencing, has come to represent the corporate and regulatory failures that created the larger contamination now moving underground in Bethpage and surrounding communities. Newsday featured the site in an investigation, "[The Grumman Plume: Decades of Deceit](#)," published in February.

The stories detailed a history of deceptive statements, missteps and minimization — from both Grumman and regulators — that long slowed cleanup of the pollution that has become Long Island's most intractable environmental crisis.

The plume — 4.3 miles long, 2.1 miles wide and as much as 900 feet deep — continues to spread in the region's sole-source aquifer, forcing local water districts to install increasingly costly systems to remove the contaminants, chiefly TCE, from what they deliver to taps. Some of the most contaminated areas of the plume stem from the pit-turned-ballfield where Grumman disposed of its wastes.

The state, which long endorsed plans that failed to fully contain the plume, last year approved a comprehensive system of extraction wells and treatment plants that would finally stop its spread and, after 110 years, bring the groundwater back to drinking standards.

It is continuing negotiations with the Navy and Northrop Grumman to enact the plan, but has said it will sue the polluters if they don't agree to do the work and pay its estimated cost of \$585 million.

"Rest assured we are expediting this process to the greatest extent and will continue to keep the community informed," Brand said.

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<https://www.northjersey.com/story/news/essex/belleville/2020/05/26/belleville-nj-didnt-report-corrective-actions-after-bacteria-found-water/5260318002/>

Belleville failed to report corrective actions after coliforms found in water

By Kaitlyn Kanzler

May 26, 2020

The Belleville Water Department failed to report its corrective actions to the state after coliform bacteria were found in the township's water system.

Coliforms are a group of bacteria that are naturally present in the environment and human and animal waste. While not harmful, they are an indicator that other, potentially harmful pathogens may be present.

The township routinely monitors its drinking water for contaminants. Coliform bacteria have been found in system samples multiple times during a 12-month period, most recently in September 2019.

In a May 7 notice to residents, the township emphasized that there was no emergency.

During water assessment, no sanitary defects were found, but the New Jersey Department of Environmental Protection's Bureau of Safe Drinking Water found concerns during a site visit.

The town implemented several corrective actions, including sampling protocols, instrument calibration, maintaining interconnection sump pumps, maintaining a flushing log and chlorine residual recording, according to the notice.

Belleville was supposed to report any corrective actions by Jan. 10. The failure to report the actions "prolonged the risk of contamination," the notice said.

"We are committed to correcting the deficiency to eliminate the threat of contamination," the public works department said in the notice, which also said the township finished the suggested corrective actions by Feb. 17.

Belleville's water supply is from the Pequannock Water Treatment Facility.

Mayor Michael Melham and Thomas Herits, manager of the water department, did not immediately return calls for comment.

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NorthJersey.Com

<https://www.northjersey.com/story/news/passaic/ringwood/2020/05/26/ringwood-nj-tells-quarry-operator-install-sentinel-wells-leave/5261519002/>

Ringwood officials tell quarry operator to install monitoring wells, or pack up and leave

By David M. Zimmer

May 26, 2020

RINGWOOD – The Borough Council is giving officials at Braen Stone’s Van Orden Sand & Gravel until mid-August to uphold the terms of their quarry license or end operations.

Borough officials said the West Brook Road rock quarry is lacking perimeter monitoring wells needed to safeguard residential wells that could be affected by the quarry's steady expansion. The wells were negotiated during the quarry’s last license renewal in 2016 and have yet to be installed, said Richard Clemack, the borough attorney.

Councilwoman Kathleen O’Keefe said she is extremely concerned about the roughly six dozen area homeowners that rely on private wells. There are no nearby water mains to back the residents up if their wells run dry, she added.

“It’s imperative that these wells be in place, so we can protect the water supply of these residents,” O’Keefe said.

Jerome Vogel, the Hawthorne-based attorney representing the quarry, said he and other representatives would work under a 90-day license extension granted on May 21 by borough officials to resolve any disagreements that would prevent a three-year renewal through 2022. That includes discussing the size of the quarry's performance bond and the well installation study that Braen commissioned in 2016 but has yet to implement, he said.

“The time for those wells has not yet ripened,” Vogel said. “The idea that we have not put in something that was required, I don’t think is fair.”



Excavation continues at the Van Orden Sand and Gravel quarry off West Brook Road in this 2014 file photo. With the latest round of litigation between the borough and the quarry now in the books, owner Saddle Mountain LP has until mid-November to submit an application for a new operating license. (Photo: Staff photo by Joe Sarno)

Thus far, quarry operations have disturbed about 50 to 60 acres of the 95-acre quarry zone, said Sean Isgan, the borough engineering consultant from CME Engineering. The wells would serve as sentries to detect potential problems as the quarry expands toward the zone's boundary, he said.

“These wells are put in well in advance of mining for the very purpose of establishing background and seasonal and year-to-year fluctuations in groundwater,” Isgan said.

Borough officials said they expect to meet to discuss a potential license renewal through 2022 prior to the expiration of the license’s extension on Aug. 19, 2020.

They have granted 90-day extensions before, including while engaged with quarry attorneys in court. One court ruling established a floor threshold to protect the nearby private wells. Another capped the quarry’s yearly extraction limit at 413,000 tons. The town also implements an extraction fee of 5 cents per ton.

Braen Stone Industries of Haledon purchased the quarry site and surrounding property west of the Wanaque Reservoir in 1990. Residents in the otherwise residential area have since logged complaints about noise, dust, and reverberations from the explosions needed to bust the rock off the quarry walls.

Though town officials said Isgan, quarry representatives and state labor officials have not informed them of any operational noncompliance, Beverly Malouf of Crescent Drive said the noise is getting worse, and the blasts have caused cracks in her home's foundation.

With proper licensing, the quarry is expected to operate through 2051, borough records show. After the mining is over, a 25-acre body of water is expected to remain. Other portions of the site are due to receive remediation, records show.

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Queens Courier

<https://qns.com/story/2020/05/23/pandemic-forces-city-to-remove-residents-from-controversial-rockaway-park-homeless-shelter/>

Pandemic forces city to remove residents from controversial Rockaway Park homeless shelter

By Zachary Gewelb

May 23, 2020



All of the men who had been staying at a controversial homeless shelter in Rockaway Park were relocated to a commercial hotel Friday amid the COVID-19 pandemic.

The Department of Social Services (DSS) confirmed that the men had been moved from the shelter, located at 226 Beach 101st St., as part of an ongoing effort to keep shelter residents safe during the pandemic.

“At DSS, we’re continuing to implement tiered strategies and proactive initiatives to combat COVID-19, protect the New Yorkers who we serve, and ensure anyone who needs it is connected immediately to care or to isolation — and the use of commercial hotels is central to this work,” a spokesperson for DSS said. “Through these efforts, our essential staff have been able to help nearly 800 New Yorkers effectively isolate, resolve their conditions, and depart isolation.”

The spokesperson said that DSS is targeting single adult shelters with congregate settings across the city — including the Beach 101st St. location — for strategic transfers to more effectively help these New Yorkers isolate and increase social distancing.

According to DSS, there have been approximately 9,000 adult individuals who are part of the shelter system that are now residing in commercial hotel locations. That total is expected to reach 10,000 this weekend, a DSS spokesperson said.

“Every day, we’re [doubling] our efforts and evolving with this situation to ensure we’re supporting our clients in all that we do—and we continue to explore new strategies and policy responses as this situation unfolds,” the spokesperson said.

The Beach 101st Street shelter had been the subject of temporary restraining order handed down in January by the state Supreme Court.

Attorney Mike Scala, representing the community, was opposed by city lawyers representing DHS and counsel for the service provider at Queens Supreme Court in Jamaica.

As part of the lawsuit, Scala had raised multiple legal issues during the proceedings including that DHS’ environmental review was improper and that the 108-bed shelter would constitute a residence for the mentally disabled in violation of state law which has a cap of 48 individuals. He argued there was evidence of financial impropriety with the not-for-profit service provider.

While the temporary restraining order was put into effect in January — which delayed the opening of the shelter — community members complained that the city had bypassed lawful procedure by moving people into the facility in March before a contract was registered, Scala said.

Then, the COVID-19 pandemic hit, which effectively shut down the court system with the litigation ongoing and enabled the city to operate the shelter, according to Scala.

“We took the city to court and we won on more than one occasion,” said Scala. “The city continued to take the law into their own hands. We have been beyond frustrated by this administration’s failure to pursue sensible homelessness policies and refusal to respect the rules meant to protect everyone, and we’ve fought them every step of the way.”

Torey Schnupp, the lead petitioner in the lawsuit against the city and activist behind the group Rockaway Solutions Not Shelters, called on the city to “provide permanent, responsible and low density affordable housing, along with supportive services, to suit the unique needs of the homeless population.”

“The practice of warehousing human beings has had grave consequences and has now forced homeless back into hotels, the very places the city was trying to phase out,” Schnupp said. “Our goal is to prevent any more people from being warehoused at this location.”

Councilman Eric Ulrich, state Senator Joseph Addabbo and Assemblywoman Stacey Pheffer Amato put out a joint statement Saturday applauding the decision to relocate the shelter’s residents during the pandemic.

“Though Beach 101 Street remains a bad location for a homeless shelter, the Department of Homeless Services made the right decision by temporarily moving the residents to a different location,” the lawmakers said. “Giving each resident an individual room will help maintain social distancing and slow the spread of COVID-19 among both the shelter and non-shelter population. Frankly, they should have done it sooner. We will continue to work in the best interests of all our constituents to address concerns surrounding the shelter.”

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Trentonian

NJ DEP's McCabe to council: You gave us 'no choice' but to sue Trenton Water Works

By Isaac Avilucea

May 22, 2020



TRENTON — Catherine McCabe called council's bluff and raised them one.

The commissioner of the state Department of Environmental Protection informed Mayor Reed Gusciora that the state has "no choice" but to sue the city after the legislative body voted this month to reject \$83 million in bonds.

The bond funding was for a number of improvements and enhancements to TWW, required by state consent orders, and the Safe Drinking Water Act.

"The Council's unreasonable action has left DEP no choice but to seek judicial intervention to help ensure that the City will comply with the requirements of the ACOs and the Safe Drinking Water Act," McCabe wrote in a letter Thursday. "Regrettably, DEP has requested that the Attorney General take appropriate action before the courts.

"Ensuring safe and reliable drinking water is a critical public health priority, and it is imperative that the City's recent progress toward meeting its obligations not be lost."

It did not appear that DEP had filed suit against the city as of Friday as a search of court records turned up empty.

But it looks like it's only a matter of time before Attorney General Gurbir Grewal takes action. His office declined to comment.

Gusciora told *The Trentonian* on Friday that his warnings to city legislators "fell on deaf ears."

He believes DEP now plans to ask the court to appoint a "special master" to oversee TWW.

"It's unfortunate that it's come to this," Gusciora said. "We will no longer be in the driver's seat, including revenue sharing."

Explaining she was "encouraged" by the progress the public utility has made under new leadership, McCabe saddled most of the blame on the council for forcing DEP's hand.

At the May 7 meeting, some legislators expressed concerns about plunging the city into more debt and balked when they weren't given assurances by the Gusciora administration that the city would conduct a forensic audit of Trenton Water Works, a 200-year-old public water utility that serves nearly a quarter of million customers throughout Mercer County.

"While DEP must now take the unfortunate step of seeking judicial intervention, we also recognize that Mayor Gusciora has proposed appropriate actions to enable TWW to make the necessary improvements to its water supply system," McCabe said. "The City Council's refusal to provide the necessary financial support to achieve these legally required public health obligations simply leaves us no other choice."

Gusciora said he cautioned the council of consequences if it didn't approve the bonds, telling *The Trentonian* in an interview before the May 7 vote that it was "do or die for the city."

After the bond ordinances went down in flames, the mayor accused council of "deliberately delaying matters so they can poke DEP in the eye. The council people that voted against it have done what [former Gov.] Chris Christie was never able to do ... which is to privatize the water department. [DEP] now is going to have to decide what they want to do."

The governing body shot down two bond ordinances worth more than \$83 million for various projects to improve TWW operations 4-3.

The bonds required a five-vote supermajority to pass.

The \$50 million was to replace the Pennington Reservoir with a network of up to five storage tanks and to replace thousands of antiquated meters throughout the system.

Another \$33.5 million would have gone toward improvements at the water filtration plant, which Smith estimates as a \$300 million asset, and TWW headquarters.

Legislators Kathy McBride, Santiago Rodriguez, and Robin Vaughn voted against those bonds.

The legislative body approved \$25 million in bonds for lead service line replacement 5-2, the most pressing of the funding.

The project is part of Trenton's plan to spend \$150 million in the coming years replacing tens of thousands of lead service lines in the water system in the city and surrounding suburbs.

But it apparently wasn't enough to hold the line with DEP.

"If we lose Trenton Water Works, that will be their terrible legacy," at-large councilman Jerrell Blakeley said.

He accused the "terrible trio" of legislators who voted against the bonds of being derelict and irresponsible.

"We are stuck with these three for two more years," he said. "They have to go if Trenton is going to be a better city."

Hamilton Mayor Jeff Martin, a Democrat, called the anticipated legal action a "necessary but unfortunate step to take" to protect township customers of TWW.

Assemblyman Wayne DeAngelo, a sharp critic of TWW, previously put forth legislation to establish a regional oversight committee over the public utility after repeated water-quality issues.

"We will join, and work with, DEP in its legal action and will not stop fighting until we are satisfied that all necessary steps are taken," Martin said.

McBride reserved comment until she reviewed the letter.

Acting water director David Smith said DEP's position "comes as no surprise."

With support from legislators, he said he was willing to bring back the failed bonds to council, in a last-ditch effort to head off the state.

"It's sad that it has to go to litigation for somebody to wake up," Smith said. "I hope it's a wake-up call because the city's at risk of losing the utility."

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<https://insideepa.com/daily-feed/ewire-new-york-cites-climate-law-toxics-reject-pipeline-permit?s=eml>

Ewire: New York cites climate law, toxics to reject pipeline permit

May 22, 2020

New York is citing its sweeping climate change law as one reason it is rejecting a key permit for a planned natural gas pipeline that would supply Long Island, in addition to concerns about water quality harms that could be caused by the project's construction.

Inside Climate News is flagging the state's May 15 decision as likely the first time a state has used a climate law to block a fossil fuel project. The state said the project is "inconsistent" with its sweeping July 2019 law requiring the state's power sector to transition to net-zero emissions by 2040 and cut economy-wide emissions by 85 percent in 2050.

"In order to achieve the state's critical and ambitious climate change and clean energy policies, the state needs to continue its ongoing transition away from natural gas and other fossil fuels," a state official wrote in a letter to the pipeline developer, Williams Cos.

Specifically, the state used its authority under section 401 of the Clean Water Act to block the company's request to certify that the project would not harm water quality in the state. Its primary rationale for the rejection is that construction of the pipeline would stir up toxic sediment at the bottom of New York Harbor, threatening water quality and sensitive habitats.

But as *Inside EPA* has chronicled, EPA is seeking to restrict states' authority under section 401, including by instructing states that they can only consider water-related issues when deciding whether to certify a project.

The agency is poised to complete a regulation on the issue in the coming days, a move that might block future attempts by New York or any other state to cite climate concerns as a rationale for blocking energy infrastructure.

The Trump administration and Republicans have long complained that states are abusing the 401 process to reject gas pipelines, coal export facilities and other energy projects due to climate concerns.

Both EPA's rule and New York's permit rejection are likely to face litigation, meaning they could be test cases for states' ability to block projects and the federal government's ability to restrict that authority.

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<https://insideepa.com/daily-feed/ewire-wheeler-criticizes-chesapeake-bay-lawsuit-threats?s=eml>

Ewire: Wheeler criticizes Chesapeake Bay lawsuit threats

May 21, 2020

EPA chief Andrew Wheeler sharply criticized a threatened lawsuit over the multi-state Chesapeake Bay cleanup from states and environmentalists during his appearance before the Senate Environment & Public Works (EPW) Committee yesterday, arguing that it is far too early to be going to court over the issue.

“Nobody has failed to meet their obligations and they won’t until 2025, so these lawsuits are premature at best,” he told the May 20 oversight hearing, according to a *Politico* report.

Wheeler is responding to a pair of May 18 notices of intent to sue – from attorneys general (AG) for Maryland, Virginia and the District of Columbia, as well as the Chesapeake Bay Foundation (CBF) and others – that charge the agency is failing to ensure Pennsylvania and New York meet cleanup targets for the bay.

“This is a very last resort,” CBF President William Baker. “EPA holds the reins. They can stop this litigation.”

EPA in December found that Pennsylvania and New York’s plans to implement the multi-state total maximum daily load (TMDL) fall short of the plan’s nutrient reduction targets. While the agency can take several “backstop” actions to directly mandate nutrient and sediment cuts when states fall short of their goals, it has declined to take such steps.

While Wheeler’s testimony to the Senate cites the TMDL’s 2025 targets, CBF argues that by accepting deficient plans from the Keystone and Empire states, it is not providing reasonable assurance those targets will be met. Thus, EPA has failed to comply with an agreed upon accountability framework, it argues.

During the EPW hearing, Wheeler addressed a wide variety of other issues, as Inside EPA’s Doug Obeys reported. One main theme was panel Democrats expressing sharp criticism for EPA’s continued regulatory rollbacks during the coronavirus pandemic, as well as its controversial enforcement “discretion” policy tied to the virus.

After Sen. Tammy Duckworth (D-IL) expressed outrage at EPA’s “blanket non-enforcement policy,” Wheeler pushed back.

“No one is allowed to increase emissions under our enforcement discretion policy. And if they increase their emissions we will go after them. . . . We have been and will continue to.”

Senate Democrats on May 20 released a staff report blasting a “pandemic of pollution” and resulting deaths that could result from multiple rule rollbacks proposed or finalized within the past two months. Those include the agency’s final rollback of vehicle greenhouse gas standards, repeal of the legal basis for utility mercury

controls, a proposal to retain particulate matter (PM) standards rather than strengthening them, and a supplemental proposal to restrict use of some scientific studies.

“Too often the agency has done the opposite of what it should be doing during the pandemic,” said EPW ranking member Tom Carper (D-DE), citing environmentalists’ estimates showing more than 18,000 deaths could result from the administration’s rollback of vehicle GHG standards.

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<https://insideepa.com/weekly-focus/interstate-air-ruling-may-signal-high-hurdle-new-york%E2%80%99s-ozone-lawsuit?s=eml>

Interstate Air Ruling May Signal High Hurdle For New York’s Ozone Lawsuit

May 21, 2020

A recent appellate ruling largely upholding EPA’s rejection of a petition by Maryland and Delaware seeking direct federal regulation of emissions from sources in upwind states may set a high hurdle for New York in a similar suit -- and more broadly for East Coast states that are relying on the agency’s help to reduce interstate ozone transport.

In its unanimous per curiam ruling May 19 in *State of Maryland v. EPA*, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit mostly accepted EPA’s arguments for its 2018 final rule that rejected several petitions that Maryland and Delaware filed in 2016 asking the agency to force pollution cuts from upwind sources.

Clean Air Act section 126 allows states to petition EPA to directly limit emissions from industrial sources in other states that are contributing “significantly” to the petitioning states’ ability to meet federal air limits.

In a separate pending suit, *State of New York v. EPA* that heard oral argument May 7, the Empire State is challenging the agency’s 2019 final rule rejecting a section 126 petition to directly regulate some 350 sources in multiple upwind states. EPA says that New York has failed to meet its burden of proof to show “significant contribution” of the listed sources for the state’s inability to attain the ozone national ambient air quality standards (NAAQS).

The court’s reasoning in *State of Maryland* could pose trouble for New York’s ability to win its suit, because much of the ruling addresses broad arguments about the burden of proof for states to succeed when they file such petitions.

For example, the court found that the significant contribution demonstration must include not only proof that out-of-state air emissions are causing problems with NAAQS attainment, but also that further emissions controls on upwind states would be cost-effective -- a potentially high hurdle for states to meet when using section 126.

In *State of Maryland*, the D.C. Circuit found that EPA’s calculation of upwind contributions to ozone problems in Delaware and Maryland was wrong, and based on projections of NAAQS attainment years beyond the coastal states’ air law attainment deadlines. But EPA also rejected most of the states’ assertions regarding the

cost-effectiveness of controls, which are predicated on power plants with selective catalytic reduction (SCR) controls operating them “optimally.” The court accepted EPA’s logic on costs as “reasonable.”

New York has made similar claims about the cost-effectiveness of power plants running controls at their peak efficiency, although the New York petition covers more source types than just power plants.

The state has further clashed with EPA over the burden of proof. EPA asserts that New York’s sweeping petition amounts to a call for a new regional emissions trading program, akin to the Cross-State Air Pollution Rule (CSAPR) that limits ozone-forming nitrogen oxides (NOx) from power plants.

New York has countered that EPA demands an impossible level of proof that would necessitate access to information about sources in other states that New York lacks access to, but EPA possesses.

Both the burden of proof issue and the cost-effectiveness question were central to judges’ questions at argument in *State of New York*, and they appeared split over both questions. The judges hearing *State of New York* are Sri Srinivasan, Thomas Griffith and Patricia Millett, and so they might rule differently -- although *State of Maryland* is now D.C. Circuit precedent.

Policy In Disarray

EPA has refused to further tighten state emissions caps under CSAPR to meet either the 2008 ozone NAAQS, which is the standard at issue in the New York section 126 petition, or the tougher 2015 ozone standard. The George W. Bush EPA set the 2008 NAAQS at 75 parts per billion (ppb), and the Obama EPA tightened it further to 70 ppb in 2015.

The court in the 2019 case *State of Wisconsin v. EPA* remanded CSAPR, as updated in 2016 to meet the 2015 ozone standard, for its failure to ensure NAAQS attainment by applicable deadlines. Based on the *Wisconsin* precedent, the court then vacated the Trump EPA’s 2018 CSAPR “close-out” rule, which found states need do no more than meet existing CSAPR emissions reduction mandates in order to attain the 2008 NAAQS, in another suit styled *State of New York v. EPA*.

EPA has yet to respond to the remand and vacatur from those two cases, leaving the agency’s interstate emissions control policy in disarray. Acting EPA air chief Anne Idsal told the agency’s Clean Air Act Advisory Committee (CAAAC) during a May 20 teleconference that the agency is “hard at work on a proposed rule that is responsive to that court’s decision” in *Wisconsin*, but did not offer a timeline for the proposal’s release.

Justice Department lawyers have downplayed the significance of the *Wisconsin* precedent. EPA has, however, announced long-term plans to set stricter standards for NOx from heavy trucks, which contribute to the overall ozone problem.

Although the ruling in *State of Maryland* signals New York’s difficulty in winning its separate section 126 lawsuit, one argument from the state that the court might accept is its challenge to EPA’s reliance on air quality modeling. The agency in its rejection of New York’s petition cited modeling showing the state will attain the 2008 ozone NAAQS by 2023, when the state must meet an attainment deadline in 2021. The *State of Maryland* panel found this approach unlawful, in the light of the *Wisconsin* precedent.

This indicates a possible remand on that issue in the New York case, although if the court again accepts EPA’s arguments over burden of proof and cost-effectiveness, that could also prove a moot point.

Regulatory Strategies

Meanwhile, Maryland is searching for possible ways to force EPA to curb interstate air pollution in the wake of its defeat over its section 126 petition.

Maryland Environment Secretary Ben Grumbles said in a May 19 statement, “We are reviewing the case and continuing to explore all tools, from the Ozone Transport Commission to other regulatory strategies and partnerships under the Clean Air Act.”

The 12-state Ozone Transport Commission (OTC), comprising air regulators from Mid-Atlantic and Northeastern states, also continues to pressure EPA to take action to further limit NOx emissions from power plants, trucks and other sources that states generally cannot regulate.

Also, East Coast states and environmentalists are suing EPA in federal district court in New York and Washington, D.C. to force a response to the D.C. Circuit’s remand and vacatur in *Wisconsin* and *New York*, which they say leaves no state plans in place to meet the air law “good neighbor” requirement to curb interstate ozone, with respect to the 2008 ozone NAAQS.

States are suing EPA in the Southern District of New York, in *New Jersey, et al. v. Wheeler, et al.*, while environmentalists are suing the agency in the District of Columbia in *Downwinders at Risk, et al., v. Wheeler.* - *Stuart Parker* (sparker@iwpnews.com)

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Queens Courier

<https://qns.com/story/2020/05/21/after-cuomos-veto-queens-lawmakers-will-reintroduce-measure-to-protect-jamaica-bay/>

After Cuomo's veto, Queens lawmakers will reintroduce measure to protect Jamaica Bay

By Bill Parry

May 21, 2020



Jamaica Bay is flourishing with the cleanest water in decades, drawing marine life including a humpback whale and a new seal population, and two Queens lawmakers are refusing to allow that trajectory to change.

State Senator Joseph Addabbo and Assemblywoman Stacey Pheffer Amato will reintroduce legislation that would further protect the natural habitat, measures that Governor Andrew Cuomo vetoed in 2019.

“In the past, the waters of Jamaica Bay were polluted and devoid of marine life,” Addabbo said. “The bill that was implemented in 2014, as well as the incredible work by the New York State Department of Environmental Conservation (DEC), helped to create a drastic change in the health of the water, so much so that wildlife — such as dolphins and whales — has been sighted there for the first time in decades. Because of the success of the 2014 bill, I want to see the sunset clause removed so the bill would be permanent and we would not need to renew the protections every few years.”

The legislation corrected the longstanding problem of the use of sub-quality dredging material to fill in the borrow pits of the bay, which is expected to expire in June 2022. A borrow pit, also known as a sandpit, is an area where material such as soil, gravel or sand has been dug up for use at another location.

In his 2019 veto statement, Cuomo said the legislation would change the criteria for filling in the Jamaica Bay borrow pits to comply with the federal guidelines for the unrestricted ocean dumping of dredged material, which is not applicable to Jamaica Bay. Under the legislation, the DEC would be required to utilize more restrictive and costly federal ocean dumping criteria to test the materials instead of DEC’s existing standard. Furthermore, the legislation would make the enhanced standard permanent.



“We have made so much progress protecting Jamaica Bay, the bill passed by the legislature in 2014 and partnership with the DEC have turned the bay into an ecological miracle,” Pheffer Amato said. “We cannot dial down the efforts, or compromise our standards and relinquish all the hard work that’s been put in to get us here. These bills are only going to strengthen and further protect the bay, and we must remove the sunset clause permanently, so we don’t have to renew them. Senator Addabbo and I will continue to work with the DEC and the community activists to further protect the bay.”

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NATIONAL

Bloomberg Law: EPA’s Biggest Union Pushes Back Against Agency’s Reopening Plans

By Stephen Lee, Bloomberg Law

Posted May 26, 2020

- Union says no data to warrant reopening EPA offices
- Agency says plans supported by data, will proceed carefully

The EPA's biggest union is pushing back against the agency's plans to start the process that could lead to reopening some of its offices.

Environmental Protection Agency Administrator Andrew Wheeler told staff in an email last week that the EPA decided to take steps to soon reopen three of its 10 regional offices in Atlanta, Seattle, and Lenexa, Kansas. That decision was based on local data about coronavirus infection rates and conditions, and the agency will proceed carefully as more data is reviewed, Wheeler said.

No precise date for reopening was announced. But Wheeler said he had decided to start the process to "initiate the opening" based in part on data and the actions of states and local governments in the three regions.

But the American Federation of Government Employees, in a response [letter](#) to Wheeler, wrote that no data exists to suggest it's safe to reopen, and that the union hasn't been invited to participate in the reopening talks. The move is part of [broader union discontent](#) about the federal government's policies when it comes to returning to office work.

An EPA spokeswoman denied that the unions haven't been consulted. The agency has held seven formal briefings with its unions to discuss the reopening plans, she said, starting on March 10 and extending through May 22.

Nevertheless, Gary Morton, president of AFGE Council 238, which represents several thousand EPA employees, wrote to Wheeler that employee views haven't been included.

"It is particularly telling that the agency refuses to share data and plans with a workforce heavy in scientific expertise," Morton wrote in the letter.

"If there is a reopening of federal workplaces, more people will use public transit and communal work spaces, and the more the virus will spread," Nicole Cantello, an EPA attorney in Region 5 in Chicago and president of AFGE Local 704, wrote in a separate letter on Tuesday to Kurt Thiede, head of Region 5.

"The more the virus spreads, the more our hospitals will be overrun, and the more people will die."

EPA Says Union Was Consulted

The EPA spokeswoman said the unions will continue to be regularly informed as the agency moves ahead with reopening plans.

"However, the administrator talks directly to the employees and does not need to speak through the unions," she said.

The spokeswoman also said the EPA's plan for an "eventual phased return to agency offices will take a measured and deliberate approach that ensures our employees' health and safety."

The reopening plans have been a topic of discussion among EPA leadership since at least late April. Doug Benevento, associate deputy administrator for the agency, said during an April 21 employee-only briefing that the EPA was working on steps for workers to go back to the office with the “lowest risk possible.”

The planning followed a White House [memo](#) last month for federal agencies to prepare for a return to work in low-risk areas, once certain conditions are met.

One staffer at EPA headquarters in Washington, D.C., said she worries about maintaining social distancing in that office, especially after the agency moves 600 employees into headquarters from their current office in the Potomac Yard neighborhood of Northern Virginia.

That move had been scheduled for March, but was temporarily shelved when the coronavirus pandemic struck. The EPA hasn’t publicly announced plans for reopening its Washington headquarters.

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E&E News: States lead court fight against Trump. They're winning

<https://www.eenews.net/greenwire/2020/05/26/stories/1063239367>

By Pamela King and Jeremy P. Jacobs, E&E News

Published: Tuesday, May 26, 2020

The Trump administration's aggressive deregulatory agenda has run full-speed into a blockade set by Democratic attorneys general.

Led by New York and California, the states have challenged virtually every effort by EPA and other agencies to walk back Obama-era rules like the Clean Power Plan and Clean Water Rule.

And they are winning.

Republican attorneys general similarly sued over many rules that came out of Obama's EPA. But the Democrats have filed significantly more lawsuits, and they have been more successful — winning 80% of the cases thus far, according to an analysis of the challenges, which often take years to work their way through the courts.

The cases often draw the support of 15 to 20 Democratically led states, and they are typically helmed by New York Attorney General Letitia James and California Attorney General Xavier Becerra.

Becerra said there are differences between the current strategy and what Republicans did during the Obama administration.

"Part of it has nothing to do with California or Democratic AGs," he told E&E News. "It has to do with an administration hellbent on taking us back to the 20th century."

The states' "strongest allies," Becerra said, are "facts, science and the law."

The second difference: "We're winning, and we are winning at a much better clip than Republican AGs ever did under President Obama."

Becerra has sued the administration 81 times on a wide range of issues, including immigration and health care. But more than half of the lawsuits have challenged environment and energy policies. James, who took office last year, has also spearheaded many multistate lawsuits and has pressed EPA to act on smog-forming pollution that crosses state lines.

"I am offended by the regressive policies of this administration — policies that threaten the air that we breathe, the water that all of us enjoy," James said in an interview.

Multistate lawsuits launched by Democratic attorneys general have seen an 80% win rate against the Trump administration in court, according to data compiled by Paul Nolette, an associate professor at Marquette University.

They have notched wins on issues including regulating methane emissions from landfills, ozone air standards, and key water and endangered species regulations. But they don't always succeed; the states were rebuffed in a challenge to Trump's 2017 "two for one" executive order that required two regulations to be nixed for every new one issued (*E&E News PM*, Dec. 20, 2019).

States and environmental groups also lost their challenge to EPA's initial decision to revise the Obama-era car rules, but they are regrouping for a lawsuit over the subsequent rollback (*Greenwire*, Oct. 25, 2019).

By comparison, Republican attorneys general — often led by Texas — won about 60% of their cases against the Obama administration, said Nolette, the author of "Federalism on Trial: State Attorneys General and National Policymaking in Contemporary America."

"AGs win a lot," he said. "They win more than they lose."

One reason for that success, Nolette said, is that states can band together to pick the most favorable forums for their lawsuits. The most popular venues: the U.S. District Court for the Northern District of California and the U.S. District Court for the Southern District of New York.

Those benches generally remain friendly to environmental claims — even after three years' worth of judicial appointments by President Trump, Nolette said.

Others noted that while Obama was far to the left on certain issues — such as regulating methane and carbon dioxide — he wasn't as extreme as the Trump administration has been with its deregulatory agenda.

"The difference here is the Trump administration has been very, very aggressive not only in what it rolls back, but how much it has rolled back," said Mark Ryan, a former Clean Water Act attorney in EPA's Region 10.

"There is a lot more low-hanging fruit," he said.

Legacy of advocacy

New York and California have long histories of progressive environmental policies, and the efforts of James and Becerra carry forward that legacy.

James, the first woman of color to serve as New York attorney general, was elected in 2018 and stepped into an office with a rich history of advocacy that began when the state led challenges of EPA's deregulatory efforts in the 1980s, Nolette said.

The state is also often involved in Clean Air Act litigation because it is located downwind of pollution generated in the Midwest, he said.

Similarly, California has enacted more progressive policies than the federal government on a host of issues, especially air pollution.

Becerra was elected California's attorney general in 2016. The post has been a political launching pad in the state; former Gov. Jerry Brown (D) and his father, Gov. Pat Brown (D), held the job, as has Sen. Kamala Harris (D-Calif.).

Becerra also has proved he has political chops. He's long been considered a rising star in the Democratic Party. Before becoming attorney general, he served in the House, eventually becoming chairman of the Democratic caucus.

He was blunt when asked why the courts — and not Congress — have emerged as the primary venue to fight the Trump administration.

"Facts, science and the law still predominate in the courts," he said, "unlike in Congress."

'Special solicitude'

Blue states' lawsuits against the Trump administration often accompany similar challenges brought by environmental groups like the Sierra Club or the Natural Resources Defense Council.

But states' claims carry extra heft in court, a fact the Supreme Court recognized in the watershed environmental case *Massachusetts v. EPA*, which said EPA could regulate greenhouse gas emissions under the Clean Air Act. The opinion, written by Justice John Paul Stevens, said states enjoyed "special solicitude" in court.

"States have special status not only in protecting the interests of their citizens but also because they have a primary responsibility for the environment in their states," said David Hayes, a former Interior Department official during the Clinton and Obama administrations who now leads the State Energy & Environmental Impact Center at New York University School of Law.

The special standing enjoyed by states was on full display last week in a legal battle over the Trump administration's efforts to overhaul implementation of the Endangered Species Act.

A federal court rejected a bid by government attorneys to toss the states' case on grounds they lacked standing but asked environmental groups like the Center for Biological Diversity to do more work to demonstrate how they would be harmed by the administration's actions ([*Greenwire*](#), May 19).

For environmentalists, the increased effort by the states is a welcome development.

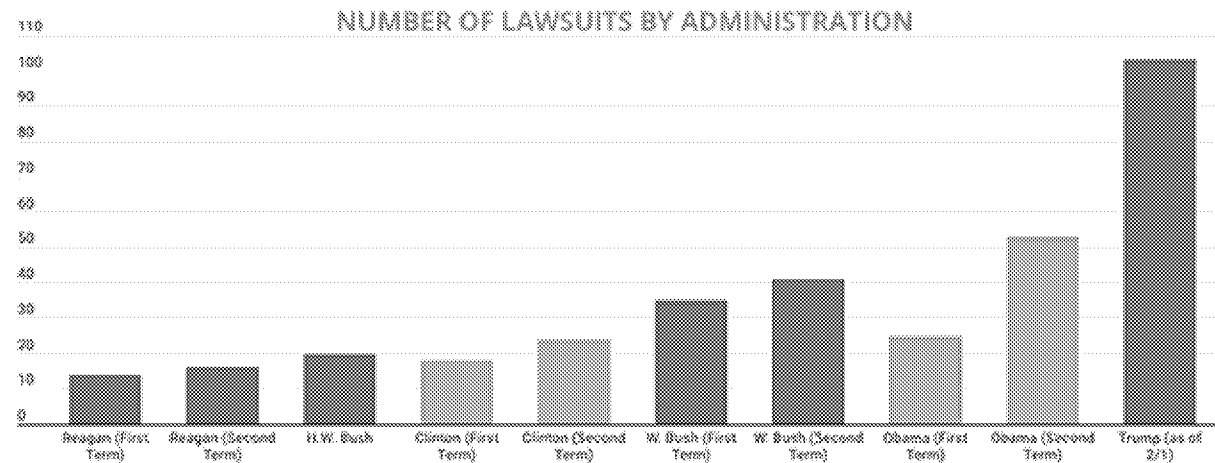
"Finally, Democratic AGs are saying they have a role to play," said Jen Pelz, director of WildEarth Guardians' Wild Rivers Program.

Others cautioned against giving the Democratic attorneys general too much credit.

"They are just clearly expressing increasingly the red-blue divide among states," said Tony Francois, a senior attorney with the conservative, California-based Pacific Legal Foundation.

"It's important when looking at a phenomenon like that — active and coordinated work by groups of states — evenhandedly," he said.

'Force multiplier'



[+] Democratic attorneys general have been more active in challenging Trump era rules than their Republican counterparts during the Obama administration. Dr. Paul Nolette, State Litigation and AG Activity Database

Nolette's data shows that, indeed, both blue and red states have been active in challenging policies from administrations of the opposing party.

But the pace has accelerated dramatically. The number of state lawsuits rose during the George W. Bush era, then ticked up again during the Obama years.

During the Trump administration, the number of lawsuits has nearly doubled.

James said the attorneys general have regular conference calls to decide who should take the lead on a particular lawsuit. Often, New York or California assumes the top slot in a multistate challenge, but other states, like Massachusetts and Washington, have taken leading roles in actions related to Endangered Species Act and National Environmental Policy Act regulations.

"When you have multiple states weighing in strongly on the same issue, it's a force multiplier," said Hayes, who in his current role promotes litigation by states against the Trump administration.

"It's impressive when you have some of the largest and most important states in our economy all weighing in with a single voice on matters of national importance," Hayes said.

What will 2020 hold?

As President Trump wraps up his term, his administration continues to churn out new federal rules.

Democratic state attorneys general say they stand ready to sue over all of those actions — particularly recent Clean Air Act rollbacks that come as the nation is gripped by the spread of a respiratory virus.

"People are dying from this pandemic, individuals with respiratory problems, and a lot of their respiratory problems are exacerbated by the air quality," said James. "To roll back all the progress that we've made in this nation under the previous administration is one of my reasons for my commitment to justice."

If presumptive Democratic nominee Joe Biden beats Trump in the election, the states' legal strategy would likely undergo a dramatic shift.

For now, though, blue states are focused on building their cases in court. New York recently spearheaded a challenge of the administration's new definition of which waterways and wetlands are subject to Clean Water

Act protections, and more lawsuits are expected as the agencies rush to lock in final rules before the end of the year.

Hayes of the State Impact Center noted that the administration's late rollout of so many of its signature rules is due in part to states' success in fighting early efforts to repeal or delay Obama-era rules.

"It's been a huge victory for the AG community that we're now at the end of the term and only now are final rules going into place," he said.

"And guess what?" Hayes said. "The AGs are right at the courthouse door to stop their replacement rules."

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E&E News: Union to Wheeler: 'No justification' for reopening plans

<https://www.eenews.net/greenwire/2020/05/26/stories/1063239853>

By Kevin Bogardus, E&E News

Published: Tuesday, May 26, 2020

EPA's largest employee union is denouncing the agency's plans to reopen during the COVID-19 pandemic.

American Federation of Government Employees Council 238, which represents about 7,500 EPA employees, sent a letter Friday to EPA Administrator Andrew Wheeler saying the union saw "no justification" to order workers back from teleworking to their offices given the risks from the coronavirus.

On Thursday, Wheeler told staff in an internal email that EPA would begin a slow, phased reopening, beginning with EPA Regions 4, 7 and 10. Employees would still telework during the initial weeks of the reopening and return to the workplace in waves as EPA leadership monitors data on the virus's spread (*Greenwire*, May 22).

Those plans were a shock to the union.

"To our utter surprise, you informed the workforce yesterday that three EPA regional offices are being put on the path to re-open," the council said, adding that it saw no data or analysis that those offices met the criteria to be reopened.

The council, which is the umbrella group for all AFGE locals at EPA, said agency employees had not participated in the reopening plan, nor had EPA bargained any such plan with AFGE.

"It is particularly telling that the Agency refuses to share data and plans with a workforce heavy in scientific expertise," said the union.

An EPA spokeswoman told E&E News that the agency has had briefings on the pandemic with its employee unions beginning in March and continuing through May.

"As Administrator Andrew Wheeler stated last week, EPA's plan for an eventual phased return to agency offices will take a measured and deliberate approach that ensures our employees' health and safety. Throughout the

COVID-19 pandemic, EPA has held seven formal briefings with its unions to discuss the agency's status and plans for reopening," said the agency spokeswoman.

Dianna Myers, president of AFGE Local 534, which represents EPA Region 4 employees, said she was concerned about the plans to reopen the Southeastern branch. Region 4's main office is in Atlanta.

"There is no apparent reason for the Region 4 office to be open. All I see is that this return to the office falls right in line with this administration's blatant disregard for the American people. The Georgia governor did the same thing when he reopened the state. Again, a blatant disregard for residents of Georgia," Myers said.

AFGE Council 238 had asked the EPA administrator in an April 29 letter to "put lives first" with regard to reopening the agency. Wheeler has stressed his concern for the health and safety of EPA employees during the pandemic in messages to staff, including in his announcement last week about reopening. But the union questioned those sentiments.

The union said in its Friday letter, "At best your actions contradict your stated priority, but in reality they demonstrate utter disregard for the EPA employees' health and welfare you claim to cherish."

The council said EPA workers should continue to telework during the pandemic, following public health experts' advice to stay home. AFGE has pushed for more telework in recent contract negotiations with EPA and made some gains on the issue in a deal that the union is scheduled to vote to ratify on June 10 (*Greenwire*, May 20).

"In this way, we can perform the Agency's mission indefinitely, and help to stop the spread of this pandemic until EPA workers' safety can be guaranteed. For the vast majority of the Agency, that means we can continue teleworking until a viable treatment or vaccine for COVID 19 is found," said the union's letter.

The council concluded to Wheeler, "You say the health and safety of EPA employees and their dependents is your highest priority. We beg you to keep your word."

The EPA spokeswoman said, "The unions will continue to be regularly informed as the agency moves through its rolling reopening; however, the administrator talks directly to the employees and does not need to speak through the unions. The agency will fulfill any bargaining obligations required by law."

Gary Morton, president of AFGE Council 238, signed the letter to Wheeler. Morton told E&E News today that EPA hadn't yet responded to the letter.

Myers said the union has not seen a return-to-work plan and doesn't know what safety measures EPA plans to take other than what the Centers for Disease Control and Prevention guidelines recommend.

"Time and time again, EPA shows how it actually feels about its employees. EPA management's spoken words would have you believe EPA cares about employees, but EPA's actions show the direct opposite," Myers said.

"From what I know, when your words and actions don't line up, it's a lie."

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By Thomas C. Berger

Posted May 26, 2020

On May 22, 2020, the U.S. Environmental Protection Agency (EPA) published a proposed rule in the Federal Register establishing procedures for issuing and managing guidance documents.[1] The rule was required by the 2019 Executive Order (E.O.) 13891, Promoting the Rule of Law Through Improved Agency Guidance Documents[2] and complements EPA’s consolidated [Guidance Portal](#) established earlier this year. Comments on the proposal are due June 22, 2020.

This is the first time EPA has proposed to codify formal procedures for developing, modifying, and rescinding guidance. However, unlike most other procedural rules, these procedures would not have the force and effect of law, and would not be binding on EPA or enforceable by the public. Nevertheless, they are expected to significantly alter the way EPA issues and uses guidance and to offer the regulated community and public a clearer pathway to seek changes to Agency interpretive decisions reflected in guidance.

- **Scope.** Consistent with [implementing guidance](#) from the Office of Management and Budget (OMB), the “guidance” subject to the rule would include “any Agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation.” It would not apply to adjudication decisions, advisory opinions intended for particular parties, legal briefs, or statements that communicate general news updates about the Agency (e.g., press releases).
- **Requirements for All Future Guidance.** All guidance documents would be required to include certain, standardized elements (e.g., identifying number, the term “guidance,” date of issuance, disclaimer of legal effect) and to avoid including mandatory language (i.e., “shall,” “must,” etc.), unless used in the context of describing a statutory or regulatory requirement. New guidance would be added to the [EPA Guidance Portal](#), which became available in February 2020.[3] Guidance not listed in the Portal is deemed to not be in effect and would, thus, require unlisted guidance – of which there are numerous examples – to meet the new procedural requirements. Importantly, any existing guidance that is not posted to the Portal prior to OMB’s June 27, 2020 deadline[4] is considered rescinded.[5] The Agency is seeking comment on how to provide public notice of new or amended guidance.
- **Requirements for Issuing “Significant” Guidance Documents.** Perhaps most significantly, the rules would require EPA in most cases to follow public notice and comment procedures prior to adopting, modifying, or withdrawing a subset of guidance deemed to be “Significant Guidance Documents.” All guidance in this category also would need to be signed by a Presidentially-appointed (politically accountable) EPA official. “Significant” guidance documents are defined by E.O. 13891 to include, among other things, those that may reasonably be anticipated to (i) give rise to new legal or policy issues “arising out of legal mandates, the President’s priorities, or the principles of Executive Order 12866,” (ii) affect the economy by at least \$100 million annually, (iii) have a material adverse effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or the states; or (iv) interfere with actions by another federal agency.
- **Procedures to Petition for Modification or Withdrawal of Guidance.** The rules would establish a procedure for preparing, submitting and EPA action on petitions to modify or withdraw active guidance. EPA generally would be required to respond to complete petitions (i.e., those containing all required informational elements) within 90 days.

EPA is soliciting comments from the public regarding the processes and procedures established by the proposed rulemaking, which will be accepted for 30 days.

[1] EPA Guidance; Administrative Procedures for Issuance and Public Petitions, 85 Fed. Reg. 31,104 (May 22, 2020)

[2] See generally 84 Fed. Reg. 55,235 (Oct. 15, 2019).

[3] 85 Fed. Reg. 11,986 (Feb. 28, 2020).

[4] Guidance Implementing Executive Order 13891, Title “Promoting the Rule of Law Through Improved Agency Guidance Documents,” Office of Information and Regulatory Affairs (Oct. 31, 2019), p. 2.

[5] Companies interested in adding existing guidance to the Portal are advised to act well in advance of the June 27, 2020 deadline, as EPA staff still will need to review the guidance and consider whether to keep it in effect.

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Energy.AgWired: Ethanol and Oil State Senators Compete for EPA Help

<http://energy.agwired.com/2020/05/26/ethanol-and-oil-state-senators-compete-for-epa-help/>

By Cindy Zimmerman, Energy.AgWired

Posted May 26, 2020

During a hearing last week before the Senate Environment and Public Works Committee, EPA Administrator Andrew Wheeler was pushed by senators on both sides of the Renewable Fuel Standard for a commitment to helping them.

Sen. John Barrasso (R-WY), who spearheaded a letter to Wheeler from oil state senators, expressed his dissatisfaction with the 10th circuit court decision regarding small refinery waivers and pressured Wheeler to commit to giving any petitions for hardship relief for small refineries in prior years prompt consideration, and reconsider “petitions which it wrongfully denied” in prior years.

“We are looking to see what relief we can provide everyone,” said Wheeler. “The ethanol industry is also hurting as well. But the small refiners in particular because of the 10th circuit decision and because of the amount of gasoline that’s currently being sold and used.”

Sen. Joni Ernst (R-IA) told Wheeler she is frustrated with claims by some in the petroleum sector to blame biofuels and argue “that the RFS is the cause of their recent business troubles, not the COVID-19 pandemic.” She stressed that the law requires any waiver to have “clear evidence that the source of economic pain is the RFS” and asked Wheeler to commit to looking at past precedence in determining economic harm.

Sen. Ernst also questioned Wheeler about a promise he made to her last fall to eliminate E15 warning labels on fuel pumps. “It’s actually more complicated than what I said in that meeting,” said Wheeler.

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The Fence Post: GOP senators urge Wheeler to waive or reduce RFS requirements

<https://www.thefencepost.com/news/gop-senators-urge-wheeler-to-waive-or-reduce-rfs-requirements/>

Posted May 26, 2020

A coalition of 15 Republican senators last week urged Environmental Protection Agency Administrator Andrew Wheeler to use his authority under the Clean Air Act to “waive or significantly reduce the renewable fuel volume obligations (RVOs) on America’s refineries for the 2020 compliance year due to the drop in gasoline demand.”

“In 2005, when enacting the RFS, Congress provided the administrator of the EPA the authority to prevent this program from contributing to severe economic harm in a state, a region, or the nation,” the senators wrote.

“Since then, your predecessors have not found cause to use this authority. Whether prior petitions merited approval or not, there should be no doubt about the threat that the 2020 RVOs pose to our states’ economies in the midst of the COVID-19 pandemic. A failure to grant, in part or in whole, the governors’ petitions would render this provision within the Clean Air Act utterly meaningless. It would be a gross example of a federal agency nullifying an act of Congress.”

But American Coalition for Ethanol CEO Brian Jennings urged Wheeler to ignore the requests from the senators as well as similar requests from governors and attorneys general.

“None of the requests from governors, senators, and attorneys general for EPA to waive the RFS this year have been accompanied by the evidence, which is required by the law and previous precedent, showing how the RFS is the cause of ‘severe economic harm’ because such evidence does not exist,” Jennings said.

“More importantly, oil refiners and the politicians beholden to them who keep calling on EPA to reduce RFS blending obligations for 2020 due to the coronavirus pandemic are disingenuously ignoring the fact that ethanol blending is already falling below statutorily-required levels this year with no action by EPA because COVID-19 has cut U.S. motor fuel use by approximately 50 percent in recent months.

“If EPA were to cave in to requests for an unjustifiable RFS waiver, it would amount to a dual cut to renewable fuel use, giving refiners further license to escape their legal responsibility to blend and inflicting gratuitous pain on ethanol producers and farmers.”

Jennings noted that ACE had written Wheeler urging him to “increase blending obligations for 2020 to avoid violation with the statute which instructs the agency to set the RFS at a level that ‘ensures the requirements’ of the RFS are met.”

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Daily American: USDA SECURE rule paves way for agricultural innovation

Posted May 26, 2020

U.S. Secretary of Agriculture Sonny Perdue announced a final rule updating and modernizing the U.S. Department of Agriculture's (USDA) biotechnology regulations under the Plant Protection Act. The Sustainable, Ecological, Consistent, Uniform, Responsible, Efficient (SECURE) rule will bring USDA's plant biotechnology regulations into the 21st century by removing duplicative and antiquated processes in order to facilitate the development and availability of these technologies through a transparent, consistent, science-based, and risk-proportionate regulatory system.

This new rule will help provide America's farmers access to these critical tools to help increase agricultural productivity and sustainability, improve the nutritional value and quality of crops, combat pests and diseases, and enhance food safety.

"Under President Trump's leadership, USDA is implementing the first significant update to our plant biotechnology regulations in more than three decades," said Secretary Perdue. "USDA's SECURE rule will streamline and modernize our regulatory system, facilitate science-based innovations, and provide our farmers with the tools they need to produce the world's safest, most abundant, and most affordable food supply, which will help us continue to Do Right and Feed Everyone — safely."

"EPA applauds USDA's efforts to finalize the SECURE rule that will support our nation's farmers," said U.S. EPA Administrator Andrew Wheeler. "EPA is continuing our own efforts to safely reduce unnecessary regulations and further break down barriers to support advancements in biotechnology. We plan to issue our proposed rule early this summer."

"Alongside the USDA as they work to implement the SECURE rule, the FDA is committed to encouraging innovation in agricultural biotechnology while utilizing scientific risk-based approaches in our regulatory approach," said FDA Commissioner Stephen Hahn, M.D. "FDA is dedicated to making sure that American consumers have confidence in the safety of the food they feed their families."

Background:

USDA's previous regulations focused on whether a plant pest was used in the development of a plant using genetic engineering and required a lengthy deregulation process for those plants that did not pose increased pest risk. After 30 years of experience, USDA's Animal Plant Health Inspection Service (APHIS) regulatory scientists know that simply using a plant pest in the development of a plant does not necessarily cause the plant to pose a risk to plant health. Thus, the final rule puts in place a more efficient process to identify plants that would be subject to regulation, focusing on the properties of the plant rather than on its method of production. APHIS will evaluate plants developed using genetic engineering for plant pest risk under a new process called a regulatory status review, regulating only those that plausibly pose an increased plant pest risk.

This updated process aligns with the President's Executive Order for Modernizing Biotechnology and the Coordinated Framework for Biotechnology, and will ensure the regulations keep pace with the latest science and technological advances, reduce regulatory burdens for developers of plants developed using genetic

engineering that are unlikely to pose plant pest risks, and ensure that Agency resources are better focused on the prevention of plant pest risk.

USDA undertook an extensive outreach effort in developing the proposed rule, traveling the nation and meeting with the public, members of academia, state departments of agriculture, grower and commodity-related organizations, and non-governmental organizations. The Agency also considered comments received during public scoping and comment periods related to the 2008 and 2017 proposed rules, which were later withdrawn; comments on a 2018 Notice of Intent (NOI) to conduct a programmatic environmental impact statement (PEIS); comments on the proposed rule and the draft PEIS; certain provisions of the 2008 Farm Bill; and recommendations from the 2015 USDA Office of Inspector General (OIG) report on genetically engineered organisms. The Agency also met with foreign regulators and international stakeholders. In issuing the final SECURE rule, APHIS carefully considered each of the thousands of comments received in response to proposed rule.

APHIS' rule is final on the day it is published in the Federal Register. The new rule's provisions become effective on key dates over the next 18 months. You can find a complete overview of the effective dates for the provisions in the final rule and a description of the implementation process on APHIS' website.

Today, USDA is providing an unofficial version of the final rule on its website as a courtesy to the public. The final rule published in the Federal Register constitutes the official version of the rule and may include technical formatting changes from this version.

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Inside EPA: Top Toxics Official Expects EPA To 'Tailor' First TSCA Management Rules

<https://insideepa.com/daily-news/top-toxics-official-expects-epa-%E2%80%98tailor%E2%80%99-first-tsca-management-rules>

By Maria Hegstad

Posted May 26, 2020

As EPA moves closer to completing some of its first chemical evaluations under the revised Toxic Substances Control Act (TSCA), a top official says he expects the agency will narrowly "tailor" any risk management rules the agency eventually writes, to address any "unreasonable risks" it finds in its final evaluations.

EPA will consider "how to more effectively tailor risk management solutions for those different unreasonable risks identified," Stan Barone, deputy director of EPA's Risk Assessment Division in EPA's toxics office, said during [a May 20 GlobalChem webinar](#) hosted by the American Chemistry Council (ACC).

Barone added that one approach EPA has tried during the risk evaluation phase, site visits, will be helpful in the risk management phase as well. "We have been and will continue to conduct site visits to [gather] information on practices; this has been very, very beneficial to us in risk assessment and risk management processes ... We are trying to engage the stakeholder community on current practices" as much as possible, he said.

His comments come as the agency is expected next month to complete “at least two” of the first 10 risk evaluations of existing chemicals it is conducting under TSCA, with the remainder slated to be completed later this summer. EPA has struggled to complete the first 10 evaluations, missing a December 2019 deadline to finalize the documents and triggering an optional six-month extension which puts the new deadline in June.

Any evaluation that finds conditions of use pose “unreasonable risk” triggers a three-year process to develop risk management actions or rules sufficient to negate that risk, Barone said.

At the same time, agency staff are working against another June statutory deadline to finalize the scope documents that will define the breadth of the next 20 evaluations.

Since Congress reformed the law in 2016, EPA has spent significant time evaluating risks of existing chemicals’ uses and has only sought or proposed to regulate a handful of uses. But those steps that EPA has taken likely underscore Barone’s comments that the agency will tailor any risk management actions.

For example, last year, the agency finalized a rule banning consumer uses of paint strippers containing methylene chloride. The regulation has already drawn competing challenges from environmentalists, who are seeking a broader ban on commercial uses of the paint stripper too, and industry groups, who say it went too far.

Similarly, the agency has proposed a series of rules addressing five persistent bioaccumulative toxics (PBTs) -- decabromodiphenyl ethers (DecaBDE); hexachlorobutadiene (HCBD); pentachlorothiophenol; phenol, isopropylated, phosphate (3:1) (phenol) and 2,4,6-tris(tert-butyl) phenol.

EPA toxics chief Alex Dunn has said that the measure, which must be finalized before the end of the year, provides a model for how the agency expects to regulate other chemicals’ uses.

The proposed PBT rule is “a great example of what I think you will see more of from EPA as we move into chemicals management,” she told a 2019 event. She noted the proposal includes “a range” of chemical management strategies, including concentration restrictions and container management strategies. “I believe it shows that when we’re talking about managing exposure and risk, there are lots of ways to do it under TSCA,” she said.

While EPA identified five PBTs for possible regulation, the proposed rule declined regulation of HCBD, a byproduct produced during the manufacture of chlorinated hydrocarbons, saying it was already regulated. In addition, the proposal delays regulation of some uses of DecaBDE, a flame retardant, in the aviation and auto sectors after industry raised concerns that they lacked alternatives.

Like the methylene chloride rule, EPA’s PBT proposal is also likely to face dueling litigation once finalized as environmentalists and industry groups have called for competing approaches.

Risk Evaluations

Barone also indicated the agency is scrambling to address concerns raised by EPA’s Science Advisory Committee On Chemicals (SACC) and others as officials work to complete the first 10 evaluations.

“We are looking back at all the public comments and SACC recommendations,” he said.

Barone said there were “a lot of cross-cutting comments” relating to broader issues among the evaluations, and he said that as EPA is developing its responses to comments for the final evaluations staff found “many, many cross-cutting [issues raised on] the processes and the science and methods that we’re going to be looking at in a more holistic way this summer,” as the agency prepares to evaluate the next 20 chemicals.

But Barone indicate that the agency was unlikely to address concerns from SACC members, Democrats and environmentalists who have questioned EPA's policy of excluding uses or exposure pathways that can be regulated under a different statute or managed by a different EPA office or federal agency.

"The lack of clarity in our regulatory nexus affects our exposure pathways and scopes of draft risk evaluations" Barone said. "It is something we received substantial comments on. Some have perceptions that TSCA is an uber rule covering all of the chemical lifecycle ... the Administrator has the option to defer to other parts of the program and we are in our conceptual models deferring to other parts of the program when we identify overlapping authorities with other aspects of our programs."

Barone also noted that staff have been working "fast and furiously," albeit with delays due to COVID-19, to meet the June deadline to finalize the scoping documents that will guide the next 20 evaluations that EPA is undertaking.

EPA is also preparing to evaluate a handful of chemicals that companies requested the agency evaluate, and Barone said that EPA is expecting to receive another such request. "We have another group of chemicals that are potentially coming in as a manufacturer request [but they are] not officially requested yet."

'Critical Data Gaps'

He noted that staff are looking for gaps in the existing data the agency has on the next 20 chemicals. Such gaps proved problematic in several of the first 10 evaluations. "We've already identified some" confidential business information (CBI)," Barone said. "We will be following up with companies on [those]." Barone said the search for data gaps stems from critical comments on some of the first 10 evaluations.

As a result, Barone said that identifying "critical data gaps early in the process" has become a lesson learned and focus of the early stages of the new evaluations.

As one example of such criticism, some of the agency science advisors who reviewed the first chemical risk evaluation EPA released in draft form for peer review, pigment violet 29 (PV29), urged EPA officials to gather more information because they said the draft did not support EPA's draft threshold finding that the chemical doesn't require risk management.

As a result, the agency later issued orders requiring PV29's manufacturers to conduct testing to provide the data.

Barone also described as "one of the key recommendations" the agency has received "from multiple sources including stakeholders" and even some SACC members is "how to streamline the peer review process."

EPA's rule implementing how the agency conducts the evaluations of existing chemicals as required by TSCA states that the agency will conduct peer review of all draft evaluations -- but it does not require that those reviews be conducted by SACC. Dunn has said she plans to change how EPA utilizes the SACC, and that in future she intends to have SACC address overarching scientific issues rather than perform peer review of each individual evaluation. She has not, however, discussed publicly how peer reviews might be conducted of the next 20 drafts.

Barone noted that Dunn has "spoken to the issue of [SACC] looking at more general principles and methodologies ... and not taking all of our risk evaluations to [SACC] and looking at other means [of peer review] in the future."

Barone also acknowledged the numerous critical comments on the systematic review approach the toxics office developed for conducting TSCA evaluations as "being unclear." He said the agency was required to build the approach while it was developing the first 10 evaluations because Congress required the agency to begin using

its new authorities the first day of reformed TSCA's enactment, adding that EPA has sent its approach to the National Academy of Sciences (NAS) for peer review -- though that process has been interrupted by the pandemic.

"One of the recommendations and tasks we've taken on is to develop a more comprehensive and revised systematic review for the next 20," Barone said. He added NAS' committee to review EPA's approach will conduct a series of online workshops this summer, with announcements to be released soon. -- *Maria Hegstad* (mhegstad@iwpnews.com)

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E&E News: EPA settles with railway over lead concerns

<https://www.eenews.net/eenewspm/2020/05/26/stories/1063240695>

By Maxine Joselow, E&E News

Published: Tuesday, May 26, 2020

EPA today announced a settlement with BNSF Railway Co. over alleged violations of a hazardous waste law.

Under the terms of the settlement, BNSF agreed to clean up an estimated 2 million pounds of broken cathode-ray tube (CRT) glass that was left at its facility in Sioux City, Iowa, by a previous owner.

CRT glass is used to display images on television and computer screens. It can contain significant amounts of lead, a potent neurotoxin.

"We are encouraged by BNSF's willingness to properly dispose of the hazardous waste stored on its property," David Cozad, director of EPA Region 7's Enforcement and Compliance Assurance Division, said in a statement.

"Reducing exposure to lead and educating the public about the dangers of lead are top priorities for the Agency and the federal government," he said.

In 2014, BNSF acquired the facility from Aaron Rochester, the former owner of the company Recycletronics.

According to the settlement, Rochester never acquired a permit for the CRT glass under the federal Resource Conservation and Recovery Act.

In 2017, EPA conducted an inspection of the facility and found that concentrations of lead in the CRT glass exceeded federal limits.

Rochester faces criminal charges and awaits trial. He maintains that he is financially unable to cover the cleanup costs.

Asked for comment on the settlement, BNSF spokeswoman Courtney Wallace said in an email: "This hazardous waste was placed by a previous occupant and not by BNSF. As the current property owner, BNSF worked closely with the EPA on a Consent Agreement, which outlines BNSF's work plan to safely remove, manage and dispose of the CRT glass."

She added, "We want to be good stewards of our property and the environment, and look forward to completing this work."

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E&E News: Appeals court won't dismiss landmark wetlands case

<https://www.eenews.net/greenwire/2020/05/26/stories/1063239329>

By Jeremy P. Jacobs, E&E News

Published: Tuesday, May 26, 2020

A federal appeals court on Friday denied EPA's bid to dismiss a wetlands case against an Idaho couple that has previously reached the Supreme Court.

After more than a dozen years of litigation, the Trump administration in March sought to drop the lawsuit against Michael and Chantell Sackett concerning whether they violated the Clean Water Act when they developed land that included a wetland (*Greenwire*, March 31).

The case addresses the fundamental issue of what wetlands and streams qualify for federal protections under the Clean Water Act.

In a March 13 letter, EPA's enforcement chief, Susan Bodine, said EPA was withdrawing its enforcement order. The agency then sought to dismiss the lawsuit, currently at the 9th U.S. Circuit Court of Appeals.

The Sacketts, represented by the conservative Pacific Legal Foundation, opposed the motion, arguing that the determination that the Sacketts' wetland was jurisdictional under the Clean Water Act was still a ripe dispute.

In a short order Friday, the 9th Circuit denied EPA's motion to dismiss.

The Sacketts' lawyers applauded the order.

"We are pleased that the Ninth Circuit refused to dismiss the Sacketts' appeal, and look forward to having the court resolve, on the merits, whether their vacant lot in a mostly built-out subdivision is really a federally regulated navigable water," said Tony Francois of PLF.

The Sacketts' case previously reached the Supreme Court in 2012, and justices ruled the couple had the right to challenge EPA's enforcement action in court.

Their case now centers on the critical issue of whether the tract is subject to the Clean Water Act, raising questions about the reach of the law.

Trump's EPA has sought to narrow the law's scope with its Navigable Waters Protection Rule, which is far more restrictive of what waterways qualify for protections than its predecessor from the Obama administration.

The Trump rule has been challenged in court by environmental groups and more than a dozen states.

But the Sackett case is significant because it is much further along in the court process, and the justices have seen it before. That could put the question of the Clean Water Act's reach before the Supreme Court sooner than any other lawsuit.

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E&E News: Colo. sues over WOTUS rewrite that 'ignores sound science'

<https://www.eenews.net/greenwire/2020/05/26/stories/1063239683>

By Hannah Northey, E&E News

Posted May 26, 2020

Colorado is suing the Trump administration over its changes to the Clean Water Rule, arguing EPA and the Army Corps of Engineers ignored existing legal precedent and environmental law.

"The federal government's proposed new definition of 'waters of the United States' conflicts with the text of the Clean Water Act, contravenes controlling Supreme Court precedent, contradicts the Act's objective, and ignores sound science," wrote Colorado Attorney General Phil Weiser (D) on May 22.

The lawsuit, filed in the U.S. District Court for the District of Colorado, joins a growing crowd of blue states taking legal action to block the Navigable Waters Protection Rule.

The rule amounts to the administration's bid to define which waterways, wetlands and streams qualify for Clean Water Act protections (*E&E News PM*, May 1). The regulation significantly narrows the reach of the law from the Obama-era version.

EPA did not immediately comment when asked about Colorado's lawsuit.

But the agency has in the past said the new rule will establish regulatory certainty for landowners after decades of muddled decisions from the Supreme Court. EPA has also claimed the rule adheres to the limited authority provided by Congress, as well as Supreme Court precedent.

But Weiser in the lawsuit countered those points. The rule, he said, "undermines and contradicts the requirements of the Clean Water Act" by discarding previous Supreme Court precedent to consider "waters of the United States" to include intermittent and ephemeral streams that have a "significant nexus" to an otherwise jurisdictional water.

Other states have also argued the rule ignores the "significant nexus" standard former Supreme Court Justice Anthony Kennedy adopted in a concurring opinion in the 2006 case *Rapanos v. United States*.

Trump's revisions to the WOTUS rule, Weiser said, narrow which ephemeral and intermittent waters, tributaries and wetlands are protected under the Clean Water Act without any scientific literature or economic analysis, amounting to a violation of the National Environmental Policy Act.

He also took aim at an economic analysis EPA conducted to support its rule, calling it "structurally flawed, internally inconsistent" and said it "utilizes assumptions or analytics unsupported by the economics literature, or

is otherwise unclear or inadequately explained." The Army Corps also failed to conduct an environmental analysis or environmental impact statement, he said.

"Without scientific underpinning and support, any conclusion as to what is or is not 'waters of the United States' is arbitrary and capricious" and thus violates the Administrative Procedure Act, he wrote.

Weiser asked the court to set aside the rule and require the administration to develop a definition that "respects controlling law, is grounded in sound science, and reflects a reasonable economic analysis."

Colorado's lawsuit is part of an onslaught of litigation from all sides brought about by the finalization of the WOTUS rewrite. Property rights advocates have sued, claiming the rule is still too broad, while a broad coalition of environmentalists have also filed litigation.

Steel Mill Superfund Dispute Won't Get Supreme Court Review

<https://news.bloomberglaw.com/environment-and-energy/steel-mill-superfund-dispute-wont-get-supreme-court-review>

The Supreme Court won't take up a legal fight over the cleanup of a polluted steel mill in Indiana.

The justices on Tuesday rejected a petition from Joslyn Manufacturing Co., which had asked the high court to resolve a dispute over how quickly a company involved in a cleanup must act if it wants other parties to help foot the bill under the federal Superfund law.

Joslyn says a lower court's reading "does violence to the plain language of the statute and runs counter to Congress' intent." Respondent Valbruna Slater Steel Corp. maintains the lower court got it right.

The case centers on a steel mill that Joslyn and its predecessors operated in Fort Wayne, Ind., from 1928 to 1981. Joslyn and current owner Valbruna have been locked in a dispute for years over cleanup costs under the Comprehensive Environmental Response, Compensation, and Liability Act—also known as the federal Superfund law.

The technical dispute involves the meaning of "remedial" and "removal" under the law. The statute of limitations for a company to sue others to recover costs for cleanup depends on whether that work is classified as a one-off removal action to address immediate threats—or longer-term remedial work.

Joslyn said Valbruna couldn't recover costs related to a reinforced concrete cap on an impoundment because the action was remedial in nature, and the six-year statute of limitations on cost recovery for remedial actions had already run out.

The U.S. Court of Appeals for the Seventh Circuit disagreed, saying the work qualified as a removal action and didn't trigger the six-year timeline.

The Supreme Court decided a separate Superfund case in April.

The case is Joslyn Mfg. Co. v. Valbruna Slater Steel Corp., U.S., No. 19-917, 5/26/20.

To contact the reporter on this story: Ellen M. Gilmer in Washington at egilmer@bloombergindustry.com

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Attorney Seeks Eased EPA Permitting For CCUS As Oil Woes Shift Focus

<https://insideclimate.com/daily-news/attorney-seeks-eased-epa-permitting-ccus-oil-woes-shift-focus?s=na>

May 26, 2020

The coronavirus-related disruption to oil markets might force carbon capture projects to focus less on enhanced oil recovery (EOR) to store captured emissions and more on “non-producing” storage options, according to one industry attorney, arguing the dynamic should spur EPA to ease its rules for such projects.

“In recent years there has been much focus in the policy arena on making [carbon capture, use and storage (CCUS)] work in an EOR context. Additional focus now should be placed on how to make non-producing storage more workable,” argues a [May 21 blog post](#) from Fred Eames, an attorney with Hunton Andrews Kurth who has long worked on CCUS issues.

Renewed attention on storage options such as saline aquifers is likely because the oil sector is experiencing significantly lower global prices due to a worldwide supply glut and major demand reductions due to the coronavirus pandemic.

While CCUS experts previously suggested most projects in the short- to medium-term would be paired with EOR, Eames says that if “oil markets remain depressed for some time, projects capturing carbon may look for other storage possibilities.”

He adds that a “main focus” of policy changes should be on EPA’s “Class VI” permit rules under the Safe Drinking Water Act’s underground injection control program. Those permits apply to permanent storage of carbon dioxide in saline formations or elsewhere not associated with oil and gas production.

Industry has long complained that Class VI permits are far stricter than Class II permits used for EOR.

Eames argues that when EPA adopted its Class VI rules in 2010 it pledged an “adaptive regulatory approach” that included possible revisions in six years. As such, a review is “past due,” he says, urging CCUS groups to “lay the groundwork now for the agency to take up revisions next year.”

He outlines several issues the agency should address, including the critical topic of “post-injection site care,” in which operators must essentially ensure that captured CO2 does not leak into the atmosphere.

EPA rules currently call for a default monitoring period of 50 years, though that can be lengthened or shortened in an individual permit. Eames, however, argues this default is longer than “many commenters on the proposed rule recommended,” and said it should be shortened “to a period more commensurate with anticipated risks.”

Separately, California officials have included a 100-year monitoring period in their CCUS protocol to earn lucrative credits under the state’s low-carbon fuel standard. Industry officials have long chafed at that requirement, and even some environmentalists have suggested it might need to be revised.

Hunton’s Eames is also urging EPA to ease requirements regarding an operator’s financial responsibility, to allow for more flexibility regarding testing and monitoring of the CO2 plume and to adopt a more “risk-based structure.”

Further, he urges the agency to encourage many more states to take primary enforcement responsibility for the Class VI program, arguing this would speed the process of issuing permits. To date, only North Dakota has been granted such primacy, though EPA has proposed to approve Wyoming’s request to directly implement the program. Public comments on the Wyoming proposal are due by May 29.

More broadly, Eames notes there is just one large-scale CCUS project in the United States that uses a saline formation to store CO2 -- a corn ethanol refinery in Decatur, IL, owned by Archer Daniels Midland.

“There [must] be many more to make material progress toward meeting [greenhouse gas] emission reduction goals. And without CCUS, the world will not meet emission reduction goals.”

Tax Credits

In addition to EPA’s permitting rules, federal tax breaks for CCUS likely will play a key role in advancing such projects.

Congress in early 2018 expanded the so-called 45Q credit for the technology, offering \$35 per ton of stored CO2 if projects employ EOR and \$50 per ton if the carbon is stored in non-producing formations. Eames notes the disparity exists due to an “expectation that oil producers will pay for the CO2, as they have done for many years.”

Yet, CCUS backers have been repeatedly pressing the Trump administration to complete implementing rules for the credit. The IRS in February released initial guidance on the topic, embracing supporters’ calls to allow up to six years to complete eligible projects, though it delayed action on thornier issues such as how operators certify emissions are stored over the long term.

The IRS is developing a follow-on regulation to address that and other implementation issues. A draft proposed rule has been undergoing inter-agency review at the White House since March 13.

During a May 20 appearance before the Senate Energy & Natural Resources Committee, Energy Department Undersecretary Mark Menezes said the rules are “forthcoming,” according to a *Politico* report. The story added that Sens. John Hoeven (R-ND) and John Barrasso (R-WY) pressed President Donald Trump on the issue May 19, and that the president directed staff to ensure the rules are completed. -- *Lee Logan* (llogan@iwpnews.com)

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Pennsylvania regulators promised to keep an eye on polluters during the pandemic. They're struggling.

[Naveena Sadasivam](#) May 26, 2020

<https://grist.org/energy/pennsylvania-regulators-promised-to-keep-an-eye-on-polluters-during-the-pandemic-theyre-struggling/>



News on climate in the time of coronavirus [Subscribe today](#)

The Environmental Protection Agency (EPA) announced in late March that it would substantially relax enforcement during the COVID-19 pandemic. The decision was met with outrage. A coalition of nearly two dozen environmental justice, climate, and public interest groups even [took the agency to court](#) in response. With the EPA under fire, [state officials across the country](#) assured environmental advocates that their enforcement efforts would not let up, despite the fallout from the novel coronavirus.

But if preliminary data from Pennsylvania are any indication, state environmental agencies are likely falling well short of that promise.

“Staff are still working to protect Pennsylvania’s environment,” Patrick McDonnell, head of the state’s Department of Environmental Protection (DEP), wrote in an April [letter](#) to concerned environmental groups. Sure, inspections — the kind that DEP employees conduct to make sure that fracking sites, mines, and refineries aren’t polluting the air and water — were happening less frequently. But McDonnell insisted that the most essential enforcement was as robust as ever. “We are still on the ground at the sites most susceptible to environmental impacts,” he wrote.

Article continues below

McDonnell’s letter didn’t give the whole picture. A Grist analysis of the DEP’s own data shows that the agency conducted 37 percent fewer inspections in the six weeks after the state’s March 16 shutdown, compared to the same period in 2019.

The biggest decreases in inspections were in the oil and gas and mining programs. These extractive industries are still operating largely as they did before the pandemic, having been deemed “essential” by the government. Inspections of these industries were down about 70 percent.

At the same time, the agency has continued to process applications for permits allowing drilling, construction, and mining companies to continue their operations. Since the shutdown, the DEP has tackled more than 5,260 such requests from businesses, which is about 20 percent less than before the pandemic. The agency said that the decrease is partly due to companies making fewer requests — and that some DEP programs have actually reduced turnaround times for permits.

“While we’ve got less inspections happening, less complaints being responded to than ever, we also have new permits being filed and new operations allowed to begin,” said Leann Leiter, a Pennsylvania-based organizer with the environmental nonprofit Earthworks. “That really just highlights the fact that this system is weighted toward development, and harm reduction is a second thought at best.”

After state governors began issuing shutdown orders, many instituted work-from-home policies for state agencies in an effort to contain the virus and protect employees. As a result, field inspections — a critical component of environmental law enforcement — took a back seat.

The DEP data suggest that this approach might be leaving residents more exposed to polluting industries during the pandemic.

Investigations in response to resident complaints are down significantly. In March and April of 2019, the agency conducted 169 such investigations. After the shutdown this March? Just 21. Though the DEP told Grist that the volume of complaints had decreased by about a third, inspections dropped off much more precipitously — by about 88 percent.

On the other hand, Grist’s review also found that DEP staff have been conducting more than three times as many file reviews since the shutdown began. A file review is a type of inspection that relies on businesses’ self-reported data. Reviews of air emissions reports — which refineries and chemical plants submit routinely in order to report the amount of pollutants leaving their stacks — increased 145 percent after the shutdown compared to the same period in 2019. Overall inspection numbers for wastewater facilities and public water systems more than doubled because of a dramatic increase in file reviews, even as onsite inspections dropped.

Megan Lehman, a spokesperson for the DEP, said that the increase in file reviews is a good example of how staff have adapted to new circumstances and prioritized inspections that could be completed from home. She praised DEP staff for performing “remarkably well” despite the “unplanned, instantaneous conversion to telework.”

“Due to the severity of the pandemic, our first responsibility is to protect the health of our employees and the general public by following the governor’s orders,” Lehman told Grist.

The agency is not processing records requests while its offices are closed. Lehman provided the data at Grist's request.

In recent years, the DEP's work has been imperiled by more than just the pandemic. This year's decline in inspections comes at the tail end of a decade defined by budget cuts and staffing shortages. Since 2002, the number of employees at the agency has decreased by almost 30 percent, and its budget has been slashed by 40 percent.

Even as the agency exercised some creativity to continue operations remotely this month, the state's Republican-dominated legislature passed a bill to suspend all new rulemaking — including environmental regulations — until 90 days after Governor Tom Wolf's emergency declaration is lifted. Wolf, a Democrat, vetoed the bill this week, but another similar bill is pending and could effectively halt any action on the DEP's request to raise fees on the oil and gas industry in order to hire 49 additional inspectors.

Environmental advocates say that lawmakers are capitalizing on the pandemic to kill the fee proposal and others like it. A slew of other pending bills threaten to take away the DEP's authority to enter into an interstate greenhouse gas reduction program, slow down the agency's ability to create new environmental rules, and force it to approve permits within 30 days.

"This system isn't really adequate to protect people and climate even in normal times," said Leiter. "Every few weeks it seems like we're encountering some other legislative attack."

David Hess, who headed the DEP under former Republican Governors Tom Ridge and Mark Schweiker, told Grist that he's been "amazed" by the work the agency has been able to do during the pandemic.

"People get all upset about the Trump administration and the cuts they're making at the federal level, but we've been going through Trump-like cuts for the last 12 years here in Pennsylvania," he said. "I've been in and around these agencies for 45 years, and I've never seen a situation like this, where they went from a standing start to accomplishing what they are still accomplishing, with the resources that they have."

Fox in the henhouse

DEP staff began working from home on March 16, the day that Governor Wolf expanded his shutdown order to the entire state. Inspections took an immediate hit. That week the agency conducted about 1,160 inspections, a decrease of approximately 35 percent from its weekly average of 1,800 in 2019. Those numbers have remained steady ever since, hovering around 1,100 per week at the end of April. Inspections last dropped below 1,100 during the weeks of Thanksgiving and Christmas last year.

Clayton Aldern / Grist

The agency's inspections can be roughly broken down by program — oil and gas, mining, safe drinking water, wastewater, and radiation protection, among others — as well as by type of inspection. Routine inspections, administrative file reviews, and complaint investigations are the three main categories of the latter.

In the six weeks after the shutdown, inspections in the oil and gas and mining programs decreased overall by 70 percent. These two programs also saw the most significant decline in routine inspections. The oil and gas program, for instance, conducted more than 3,000 routine onsite inspections between March 16 and April 24 of last year. Over the same time period this year, the department completed just 97 such inspections. However, at the same time, the oil and gas department conducted almost four times the number of file reviews compared to 2019 — jumping from 278 to 1,065.

Under the conditions outlined in their permits, businesses may be required to periodically report on any number of environmental metrics that help the DEP monitor their activities. For example, refineries are required to quantify and report the amount of pollutants escaping from their smokestacks. Environmental and public health advocates say that file reviews, which rely on self-reported data, can provide meaningful information about a company's operations. They also say that file reviews are no substitute for field inspections.

File reviews are "simply not going to provide the same level of detail or encompass the same level of information about potential violations as a regulator going out and reviewing what's happening at the site in person," said Lisa Widawsky Hallowell, a senior attorney at the Environmental Integrity Project, a nonprofit founded by former EPA attorneys. "That's basically like the fox watching the henhouse."

Lehman, the DEP spokesperson, said that staff faced multiple challenges during the shutdown's first two weeks, when they abruptly shifted to teleworking. They faced technical challenges and internet disruptions when they began working from home, and field inspectors needed to secure protective equipment such as masks and gloves. Additionally, she said that "many DEP-regulated entities were required to suspend operations" in response to the shutdown order and therefore could not be inspected by the agency.

The DEP did not provide an estimate of the number of businesses that shut down and therefore could no longer be inspected. Still, the data show that the types of industries that the agency targeted in its inspections during normal times — oil and gas, coal mining, drinking water facilities, and wastewater systems — were generally considered "essential" by the state and not required to shut down.

"Most of what they inspect probably would have been operating," said Hess, the former DEP secretary. The radiation division, which conducted 65 percent fewer inspections, may have seen a decline because many clinics and doctors' offices closed during the shutdown. Overall, however, inspections wouldn't have been significantly affected by closed businesses, Hess told Grist.

Investigations in response to complaints have also plummeted. The agency conducted just 21 inspections in response to complaints in the six weeks after the shutdown, an 88 percent decrease from 2019. That decrease is likely partially explained by a decrease in the number of complaints the agency has been receiving. According to Lehman, the agency received one-third fewer complaints the month after the shutdown, compared to last year. Additionally, some inspections in response to complaints may not have been logged as such in the database, she said.

But Lehman also acknowledged that, in response to the governor's orders, the agency is only deploying inspectors into the field "when prudent" and to respond to emergencies — such as, for example, a tractor-trailer crash that results in a diesel spill.

That means that complaints from residents about odors from fracking sites and other chronic but less urgent environmental issues may not result in a site inspection. Members of the public are the agency's eyes and ears on the ground, and with many residents sheltering in place near fracking operations, the decrease in DEP

inspections means that they cannot rely on the agency to support them during the pandemic, according to advocates.

“We now have a situation where even the most responsive inspectors are being told not to respond, unless there’s some catastrophic failure of some sort,” said Lisa Graves Marucci, a community outreach coordinator at the Environmental Integrity Project. “The citizens are becoming even more frustrated because they are forced to live near some of these facilities. They have concerns, and they’ve been told someone will be there, should there be a problem. And now that human aspect of it is missing.”

Underfunded and understaffed

The discovery of the Marcellus shale play —estimated to be the largest natural gas reserve in the country — fundamentally changed the energy landscape in Pennsylvania. Beginning around 2008, the state faced an unprecedented energy boom. Seemingly overnight, large swaths of forest were razed and fracking operations began dotting the state’s mountainous landscape. Many wells were drilled right in people’s backyards.

Between 2009 and 2019, oil and gas companies drilled more than 19,000 wells in central and western Pennsylvania. The fracking frenzy filled the state’s coffers, and its budget grew 18 percent during this period. But state lawmakers simultaneously slashed the budget of the very agency charged with holding the oil and gas industry accountable.

The cuts had serious repercussions. In 2016, the EPA found that staff in the DEP’s safe drinking water program were being overworked and were handling more than double the number of cases averaged by their peers elsewhere in the country. As a result, DEP inspections were declining, the EPA said, and the number of unaddressed violations were increasing.

“This increased risk to public health is of concern to EPA,” the federal agency wrote in a letter to DEP leadership.

In response, the DEP hiked permit fees for public water system operators in order to hire more inspectors. That year the beleaguered agency also made a desperate plea to raise fees for oil and gas operators as well. As a result of low fees, the agency had reduced staffing by about 15 percent over three years and told lawmakers that it “struggles to meet its gas storage field inspection goals,” among other targets.

The DEP proposed doubling these permit fees. The agency estimated that it would receive 2,000 permit applications per year, which would generate an additional \$25 million annually and allow the DEP to hire 49 more inspectors. That request was in the last stages of being finalized when the pandemic hit. With companies scaling back new drilling due to the oil price crash, it’s unclear whether the pending fee hike would generate the additional revenue the agency needs. The DEP has only processed about 400 applications so far this year.

The proposed fee also faced significant pushback from some lawmakers. Earlier this month, Republican legislators attempted to derail the fee increase, but Governor Wolf thwarted their efforts with a veto. Many

Republican lawmakers believe that the DEP's fee request would prevent further oil and gas industry growth in the state, and some have pushed the agency to follow the EPA's lead and roll back enforcement during the pandemic. Representative Daryl Metcalfe, who chairs the House Environmental Resources and Energy Committee, demanded that the DEP "stand down" instead of "being an obstacle."

"I would like to know specifically how DEP plans to aid our Commonwealth's economic recovery efforts," Metcalfe wrote in a letter to DEP Secretary McDonnell. "What regulations do you intend to roll back or repeal to allow our business climate to recover as quickly as possible? How will the department change the way it operates to encourage economic growth?"

Hess, the former DEP secretary, has followed the agency's budget woes closely and said that staffing shortages have resulted in oil and gas inspectors managing double caseloads.

"That is not an acceptable situation," he said.

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The World's Biggest Green Hydrogen Plant Is Planned For California. Its Prospects For Electric Power And Transportation?

Ken Silverstein May 26, 2020

<https://www.forbes.com/sites/kensilverstein/2020/05/26/the-worlds-biggest-green-hydrogen-plant-is-underway-in-california-its-prospects-for-electric-power-and-transportation/#6a5784cd2a96>



The FCHV-BUS fuel-cell hybrid bus, jointly [+] © 2014 Bloomberg Finance LP

More From Forbes

Americans have been deluged with news about plastics and how they are littering cities and waterways while consuming space in landfills. There's some good news: an uncommon waste-to-fuel process is underway that can convert that material into biogas, which is then used to create green hydrogen.

Hydrogen is a key pillar when it comes to running a decarbonized economy — a fuel that can power both the electricity and transportation sectors. To that end, a plant in Lancaster, California, which is just north of Los Angeles, is in the design phase and it will use plastics and recycled paper as a feedstock — waste that would otherwise go to a landfill. It is gasified at temperatures of 7,000 degrees Fahrenheit before getting transformed into hydrogen.

The company doing this is SGH2 Energy Global, which is part of the Solena Group. It says that its technology reduces carbon emissions two-to-three times more than green-hydrogen produced using electrolysis and renewable energy. It also says that its technology is five-to-seven times cheaper. SGH2's green hydrogen is cost-competitive with "grey" hydrogen that is produced from fossil fuels, it says, which is what makes up most of the hydrogen in use now.

“The beauty here, is that Lancaster will be using this for transportation but it could also be used to generate electricity,” says Robert Do, chief executive of SGH2, in an interview with this writer. “It can be stored and then used for multiple purposes. This will be the first large-scale green hydrogen plant in the world.”

The plant will produce as much as 11,000 kilograms of green hydrogen per day, and 3.8 million kilograms per year, he says. That is nearly three times more than any existing or planned green hydrogen facility. The complex will process 40,000 tons of waste annually, mostly supplied by the city of Lancaster, which will save it \$50-\$75 per ton in landfill-related costs.

The plant is now in the engineering and design phase — something headed by Fluor Corp [FLR](#) . Construction will begin in 2021 and it is expected to be fully operational in the first quarter of 2023. It will be located on five acres and cost \$55 million to build — a project for which it has yet to get financing. Right now, the hydrogen will be used to supply California’s 42 hydrogen fueling stations. The goal is to immediately get that to 100 and then eventually to 1,000, which is dependent on the demand for green hydrogen.

“We have positioned ourselves to be the alternative energy capital of the world,” says Lancaster Mayor R. Rex Parris, a Republican. “This is game-changing technology. It not only solves our air quality and climate challenges by producing pollution-free hydrogen. It also solves our plastics and waste problems by turning them into green hydrogen...”

A Big Bite



04 December 2018, Saxony, Leipzig: Route train [+] picture alliance via Getty Images

Clean hydrogen's potential? [Bloomberg New Energy Finance](#) says that it could supply 24% of the world's energy demands by 2050 while cutting CO2 levels by 34%. It adds that this can be done at a reasonable price if favorable public policies are enacted, including putting a price on carbon.

The advantages of hydrogen are that it is abundant, renewable and non-polluting. Water vapor is the only byproduct of a fuel cell car that runs on hydrogen. But it is difficult to store that gas, and it is about 30% more expensive to move it via pipelines than it is to carry natural gas.

But Dr. Do of SGH2 says that a compelling case can be made, especially for transportation: cars and light duty vehicles require 5 kilograms of hydrogen at 700-bar compression at a hydrogen fueling station. At \$15 per kilogram, it cost about \$75 to fill up. But with a range of 500 miles, the price is competitive. A combustion engine that burns gasoline has an efficiency rate of 30%, he says, while a fuel cell car with hydrogen has one of 75%, explaining the better mileage per unit of energy.

At present, fuel cells are being adopted for materials handling equipment such as forklifts as well as in powering telecommunications infrastructure. As for the transportation sector, Honda, Hyundai and Toyota are creating fuel cell-powered cars. Meantime, FedEx Express [EXPR](#) is running a hydrogen fuel cell delivery truck in New York State that has a range of 240 kilometers on a full tank.

Powerful Injection



Signage is displayed outside the Intermountain [+] © 2019 Bloomberg Finance LP

The U.S. Environmental Protection Agency says that in 2018 the electric power and transportation sectors accounted for 27% and 28% of the total manmade greenhouse gas emissions, respectively. Dr. Do says that hydrogen can be injected directly into the existing natural gas turbines or pipelines, although it has a blending-rate of 20%. The Intermountain Power Project in Utah is converting from a coal plant to a combined cycle natural gas plant, which will then create a pure form of green hydrogen and transport it via pipelines to Los Angeles.

Dr. Do also says that hydrogen-fueled vehicles have more potential than electric-vehicles. That is because it takes much less time to power-up a hydrogen car than it does an electric one. A hydrogen tank and a fuel-cell stack weigh 10-times less than an electric car battery, he notes, adding that the best electric vehicles can go 225 miles on a single charge while hydrogen cars can hit 500 miles.

“Hydrogen will eventually take a bigger bite out of the heavy-duty vehicle market than electric vehicles,” says the chief executive. “Long-range trucks and buses will benefit. And if you have a car, you don’t need a garage with a power outlet — just a hydrogen pump and it is ready to go in 15 minutes.”

If this Lancaster project works as advertised, hydrogen's prospects will spike — not just in California but also around the world where used plastics are littering the landscape and oceans. That waste would be gasified and turned into hydrogen that can run both power plants and cars — a critical step to reaching global climate targets and running a decarbonized economy.

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Since the late 1990s, I've covered energy, beginning with the rise and fall of Enron — first as a magazine writer before becoming a columnist and editor. For more than

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INSIGHT: What's at Stake in EPA's MATS Finding Reversal

https://news.bloomberglaw.com/environment-and-energy/insight-whats-at-stake-in-epas-mats-finding-reversal?usertype=External&bwid=00000171-d6be-d437-a77b-dfff5b080001&qid=6912655&cti=FGOV&uc=1320000080&et=FIRST_MOVE&emc=neve_bf%3A12&access=eyJjdHh0IjoiTkVWRSIsImklIjoiMDAwMDAxNzEtZDZiZS1kNDM3LWE3N2ItZGZmZjViMDgwMDAxIiwic2lnIjoiMUgweXk2blUyaIValVaNnglbEtDdXF1MVd2MINFPSIsInRpbWUiOiIxNTkwNDkwODk5IiwidXVpZCI6IjI3NmwlQ2VuYjFwd083Wm53aWVNckE9PTArMVdBNTNuQzIxVGZUMHRWTII5blE9PSIsInYiOiIxIn0%3D

The EPA published a final rule on May 22 concerning the Mercury and Air Toxics Standards (MATS), a 2012 EPA rulemaking that limits emissions of mercury, acid gases and other air pollutants from coal- and oil-fired electric power plants.

The EPA determined that it is *not* “appropriate and necessary” to regulate “hazardous air pollutants” (HAPs) from power plants—which is exactly what MATS does. Paradoxically, the EPA insists that those power plants would nevertheless continue to be required to comply with MATS, “ensuring that power plants will emit no more mercury to the air than before.”

In taking this action, the EPA has pleased no one, drawing ire not only from the environmental community, but from the only industry MATS regulates—the electric power industry. Even the most ardent MATS opponents are dissatisfied because the EPA stopped short of tearing up the rule itself.

History Repeats Itself

The long and tortured history of the “appropriate and necessary finding” began thirty years ago in 1990, when the Clean Air Act was amended to include a robust new program to regulate HAPs. 42 U.S.C. § 7412. The EPA

was required to create a list of the largest HAP sources and develop stringent regulations limiting HAP emissions.

For power plants specifically, Congress required that the EPA regulate mercury and other HAPs if it “finds such regulation is appropriate and necessary after considering” a study of power plant HAP emissions remaining after other Clean Air Act programs were implemented. 42 U.S.C. § 7412(n)(1)(A). On making this finding, the EPA would be required to “list” power plants with other HAP sources and to adopt stringent HAP emission standards.

In December 2000, in the waning days of the Clinton administration, the EPA first found that it was “appropriate and necessary” to regulate power plant HAP emissions. But the clock ran out on the Clinton EPA, and in 2005, the Bush administration had a different view, determining that it was, after all, *not* “appropriate and necessary” to regulate power plants, and removing those plants from the HAP regulation list before any regulatory standards were adopted.

The D.C. Circuit, however, in *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008), vacated the EPA’s “de-listing decision,” concluding that Congress prohibited the EPA from reversing its decision to place source categories on the HAP regulation list.

In 2012, the Obama administration not only found, once again, that it *was* “appropriate and necessary” to regulate HAPs from coal- and oil-fired power plants, but also adopted the HAP emission standards we know as MATS. The U.S. Supreme Court, in *Michigan v. EPA*, 135 S. Ct. 2699 (2105), subsequently determined that the EPA’s 2012 finding was defective because the EPA had failed to consider the cost of regulation in its analysis.

On remand, following the Supreme Court’s instruction to consider cost, the EPA adopted in 2016 a supplemental finding affirming that it was still “appropriate and necessary” to regulate power plants. Murray Energy Corporation and others challenged the supplemental finding, but that case was stayed shortly before oral argument in 2017, and remains so today. Notwithstanding the constant litigation, the HAP emission standards for power plants established in MATS have remained in effect uninterrupted since 2015, the compliance date established by the 2012 rule.

Now, with another new administration, the EPA again has found its own prior action to be “flawed,” concluding that it is *not* “appropriate and necessary” to regulate power plants.

MATS Will Remain in Effect, for Now

Without even a wry reference to *Groundhog Day*, the movie featuring a different Murray but the same woeful pattern of repetition, the EPA acknowledges that its present action is “essentially indistinguishable” from its 2005 course reversal, with one key difference: the EPA concedes that it cannot remove power plants from the HAP regulation list, citing *New Jersey v. EPA*. For that reason alone, power plants will remain listed and MATS will remain in effect, according to EPA.

The EPA’s expressed motive for the reversal of the 2016 supplemental finding is not to disturb MATS but to “correct” what it has criticized as a “dishonest” calculation of costs and benefits that supported the supplemental finding. Yet, the “appropriate and necessary” finding is unique to this narrow statutory provision, and the EPA’s analysis of cost here does nothing to address the evaluation of costs in rulemaking in a broadly applicable way. For the electric power industry, though, any action that could undermine the settled law raises concern, and the finding reversal is just such an action.

Several commenters on the EPA’s proposal argued not only that the finding should be reversed, but that the rule itself must also be withdrawn. If these commenters were to persuade a court to adopt this view, MATS could be eliminated, with far reaching negative impacts on the electric power sector and other industries as well.

Hundreds of Millions Spent on Compliance

The electric power industry has fully implemented MATS in the eight years since its adoption. Long-term capital decisions—which plants to build, which to close and which to upgrade with new equipment—have been made and carried out with MATS as a key assumption in the analysis. Were MATS to be eliminated, many of these investments could be devalued or wasted entirely, and some companies might be unable to recover their stranded costs through electricity rates, or through the wholesale energy markets.

The pollution control industry also invested hundreds of millions of dollars in technology and capacity to supply electric generators with the systems and materials needed to comply with MATS. Without MATS, the market for these emission control consumables would be dramatically reduced and these investments eroded. Finally, these economic injuries do not take into account the public health benefits provided by MATS that would be lost if the rule were to be eliminated.

The stakes here are very high, and the EPA’s finding reversal will be appealed both by petitioners arguing that the finding should not be reversed, and by those arguing that the EPA is obliged to eliminate the MATS rule along with the finding.

Absent any precipitous action by the court, MATS will remain in effect while the litigation plays out in the D.C. Circuit, a process that could last three or more years if the Supreme Court grants certiorari to review that court’s decision. Meanwhile though, the parties most affected by the rule will likewise be most affected by the uncertainty that accompanies litigation, hampering investment decisions and clouding planning forecasts.

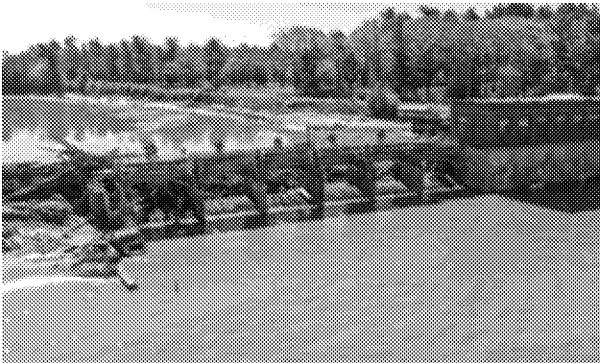
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Thousands of run-down US dams would kill people if they failed, study finds

[Emily Holden](#)

Sat 23 May 2020

- **17% of 91,000 US dams classified with ‘high hazard’ potential**
- **Neglected infrastructure in focus after Michigan dam failures**



More than 15,000 dams in the US would likely kill people if they failed, and at least 2,300 of them are in poor or unsatisfactory condition, according to recent data from the federal government’s National Inventory of Dams.

The country’s neglected and deteriorating dam infrastructure is coming to light as heavy rains and two dam failures in Michigan have caused catastrophic flooding and forced thousands to evacuate their homes in the middle of the coronavirus pandemic.

The problem will only become more serious as the climate crisis disrupts rain patterns, experts warn.

The average age of a US dam is 57 years, and many – like the Michigan dams – were built in the early 20th century, when states had not yet set safety standards. US dams received a “D” rating from the American Society of Civil Engineers in its most recent review in 2017.

About 70% of dams are regulated by states, and another 5% are regulated by the federal government. But many are not being forced to make needed repairs, said Mark Ogden, who co-authored the 2017 dam report and is a project manager at the Association of State Dam Safety Officials.

“Unfortunately, some state programs don’t have the resources they need to follow through,” Ogden said. “These can be very expensive repairs ... so if the owner is unable or unwilling to do that, it takes a lot of time and resources to go through the enforcement process.”

Many dams, for example, were built by neighborhood developers who wanted to create bodies of water for recreation, Ogden said. Then they were turned over to homeowners’ associations unprepared to maintain them.

In total, there are more than 91,000 dams in the US, according to the National Inventory of Dams, a project of the US army corps of engineers. About 17% of them are classified as having high hazard potential, meaning the loss of human life is likely if the dam falls. Another 12% have significant hazard potential, meaning a failure

probably wouldn't kill people but could cause "economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns".

About 20% of state-regulated high hazard dams do not have emergency action plans, Ogden said. Those plans would dictate how an owner should monitor for possible failures and warn officials downstream.

Ogden said repairing dams and preparing emergency plans will become even more important with more frequent intense rainfall.

If the ground is already saturated with rain before a heavy downpour, a dam could overtop or even burst.

"Over time hopefully we'll see improvements in specific dams that may be vulnerable to this, but it will take time and unfortunately will take expense and cost for owners to be able to upgrade," Ogden said.

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As Fishermen Flounder, Trump Clears A Path For Farming The Oceans

Struggling commercial fishers and environmentalists say the White House is exploiting COVID-19 to privatize the ocean.

Alexander C. Kaufman

https://m.huffpost.com/us/entry/us_5ec83d11c5b6b214329566e4?guccounter=1



ARIANA DREHSLER via Getty Images

Kindra Arnesen still had her baby teeth when she started working on the docks in Plaquemine Parish, a spindrift of land kicked southeastward off the Louisiana boot tip into the Gulf of Mexico.

Family troubles made home an unwelcome place. But with fishermen, many of whom had hauled shrimp and almaco jack from the Gulf for generations, she found safety and income, earning hundreds of dollars a week shucking oysters in the sticky summer heat.

“These guys took me in and brought me up,” Arnesen said. “They showed me this is a good way of life.”

Making a living has been getting harder for her and others in the business. Tight regulations, pollution from the 2010 Deepwater Horizon oil spill, and competition from charter boats and amateur anglers were already driving would-be fourth- or fifth-generation fishers in the region to take up other professions. Then came the novel coronavirus pandemic.

Since lockdown measures began across the country in March, seafood sales to restaurants, which normally buy up to 80% of fresh catch, have dropped dramatically, threatening thousands of mom-and-pop fishing businesses with bankruptcy.

So when President Donald Trump ordered the Commerce Department to roll back regulations on commercial fishing earlier this month, Arnesen expected some relief. But her stomach dropped as she read the May 7 executive order. The main thrust of the presidential fiat set in motion a process to open federal waters, the stretch of ocean between three to 200 miles off most U.S. coastlines, to private companies farming fish in giant pens.

“It’s such a slap in the face,” Arnesen said. “This will destroy not only my business model but thousands of other business models across the entire coastline.”

Advocates for the U.S. aquaculture industry have long argued that the world’s growing appetite for seafood demands the expansion of fish farming, from oyster beds and inland salmon ponds to open-water pens teeming with finfish. At a moment when human-induced global warming is rapidly changing life in oceans, those in this nascent sector compare offshore aquaculture to seaward wind turbines — a tool with more benefits than tradeoffs when it comes to sustainability.

“The United States has the technology, the skilled workforce, the coastal infrastructure, and the growing market for healthy farmed seafood,” Bill DiMento, president of the pro-aquaculture business group Stronger America Through Seafood, said in a statement. “Our country needs economic stimulus — not just in terms of immediate cash assistance, but also in the form of new job opportunities. Why not put Americans back to work in an emerging industry like aquaculture at a time when it is needed most?”

But the concern isn’t just that raising tuna or tilapia in federal waters will eat into the market share of those who currently make a living off the seas. Environmentalists say farmed fish produce concentrated pollution and risk devastating wild populations should they accidentally get turned loose in open waters.

The existing supply networks for producing the food farmed fish eat threaten to break foundational links in food chains from the Gulf to The Gambia, the small country on Africa’s west coast, jeopardizing the animals and people who have relied on the fish stocks that aquaculture companies crave.

The Trump administration’s move comes as the novel coronavirus pandemic rips through the nation’s meat supply chain. That has fueled fresh calls to drastically overhaul the meat-producing industry, whose pollution, animal cruelty and harsh treatment of workers threaten more public health crises in years to come.



An aquaculture fishery in Qingdao, China. (Barcroft Media via Getty Images)

“This is the nightmare scenario: Having all these factory fish farms offshore that are going to be breeding disease and causing pollution,” said Rosanna Marie Neil, the policy counsel at the Northwest Atlantic Marine Alliance, a group that advocates for fishermen. “That’s the last thing we need right now when we’re going through a pandemic.”

‘It’ll Drop Our Price To Bottom Dollar’

Before any giant fish pens can be plopped down in open oceans, Congress would need to give its approval through legislation, Neil said. But the aquaculture industry already enjoys bipartisan support.

Its website, Stronger America Through Seafood — whose board includes executives from aquaculture startups, the restaurant chain Red Lobster and agribusiness giant Cargill — displays endorsements from Rep. Steven Palazzo (R-Miss.) and Rep. Collin Peterson (D-Minn.). The group has spent at least \$161,500 on lobbying since the start of 2018, according to disclosures [ProPublica collated](#).

What Trump’s executive order this month did is establish the federal chain of command to speed through aquaculture projects once the legal approval is in place.

The 3,100-word order instructs federal agencies to start devising a permit system and designates the National Oceanic and Atmospheric Administration (NOAA) as the lead agency with authority to review and green-light projects in federal waters.

The order, according to the [Food & Environment Reporting Network](#), settles a longstanding debate over who should regulate the nation's fisheries, requiring that other agencies cooperate with NOAA's decisions. NOAA [sued](#) for such authority as recently as 2016.

The Environmental Protection Agency is still reviewing a project to raise almaco jack in weighted net pens shaped like chalices in the Gulf of Mexico off Sarasota, Florida. Under the new guidelines, NOAA would have ultimate authority to oversee similar projects.

"Our mission, as a company, is to soften humanity's footprint on the seas," said Neil Anthony Sims, the chief executive of Ocean Era, the company behind the project.

"If we can have established a commercial offshore net pen operation in the Gulf of Mexico by 2025, so that the Gulf-region fishing and boating communities can actually see for themselves the minimal impacts," he said, "then I will feel that we have established a model for how we might be able to then build further on this, and move to significantly reduce our collective footprint on marine ecosystems."

But the project, known as Velella Epsilon, highlights the concerns fishers like Arnesen have over offshore fish farming. The project [proposed](#) raising two cohorts of fish over 18 months, ultimately producing 136,000 pounds of seafood, nearly two-thirds the total commercial fishers' annual catch limit for wild species.

Yet commercial fishers, Arnesen said, feel they're at a disadvantage. They pay thousands upon thousands of dollars to meet regulatory requirements and haul fish from the open waters during only certain times of the year. Farms, meanwhile, have costs that are easier to calculate, and they harvest all at once, potentially flooding the market before the fishing season even starts.

"They're literally trying to match every bit of stock that we're already putting on the market," Arnesen said. "What would happen if they're successful and that occurs? It'll drop our price to bottom dollar, where it will no longer be feasible for us to fish that particular species."

Another worry is what happens when a storm comes. Federal forecasters last week predicted 2020 would bring a record fifth consecutive active hurricane season.

"We're a hotspot for tropical storms and hurricanes," Arnesen said. "I've seen where medium-sized hurricanes have ripped oil platforms from the seafloor. How do they think they can secure these cages? There's no way to build a structure that a storm can't tear up."

Washington state [banned](#) inland salmon farms in 2018 after the non-native domestic fish escaped cages and invaded local rivers. The effects of unleashing the fish into ecosystems already in flux is one problem from climate change is [still unclear](#). Pollution from net pens is another concern.

"There's the waste issue," said Miriam Goldstein, the director of ocean policy at the liberal Center for American Progress. "Simply put: These fish are pooping."

Researchers writing in the Journal of Agricultural and Environmental Ethics volume concluded in 2011 that the “obvious environmental and animal welfare aspects of finfish aquaculture make it hard to ethically defend a fish diet.”

Sims pointed to a five-year study published in 2019 in the Journal of the World Aquaculture Society that found no significant uptick in pollution from an offshore finfish farm off of Panama’s Caribbean coast.

Yet pesticides and chemicals to treat farmed fish for diseases that may develop in close quarters could also cause damage, as can excess food that falls out of the cages. A 2014 federal review found “offshore finfish aquaculture operations generally do not have the ability to prevent chemicals and veterinary drugs (if used) and uneaten feed and fish waste from leaving the farm environment and flowing into adjacent waters.” The environmental group Friends of the Earth concluded that “diseases, parasites, and other issues plague the stocks of industrial ocean fish farms, often causing significant death tolls.”

One model for avoiding these problems is Sims’ flagship fish farm in Hawaii, called Kona Kampachi. The project, which moved forward with special permits from NOAA and is now run by the company Blue Ocean Mariculture, is carefully monitored with divers who halt feeding if fishmeal starts seeping out of the spherical net pens.

But Goldstein said the Hawaii farm “isn’t necessarily replicable.” Hawaii, the product of undersea volcanoes, has no continental shelf, so the farm is located in deep waters where there is little concern for how feces or food could hurt life at the bottom. (Sims argued that mandating and enforcing similar conditions would be “simply a matter of agency will. No one, anywhere, is suggesting that that be changed.”)

This is the nightmare scenario: Having all these factory fish farms offshore that are going to be breeding disease and causing pollution. Rosanna Marie Neil, policy counsel at the Northwest Atlantic Marine Alliance

The fishmeal itself raises more concerns. Fish farms in the Gulf would likely feed on anchovies or menhaden, a small, oily and abundant fish that serves as a cornerstone of the wild food chain, disrupting the wild ecosystem. Pressure on the menhaden population in the years after the BP oil spill, for example, threw other species into turmoil, studies published in 2017 found.

The aquaculture industry’s demand for such fishmeal ripples oceans away. Chinese fishmeal companies monopolized the market for fish that locals in The Gambia, once considered a staple protein.

“Now the people there have no access to those fish because fishmeal firms can pay more,” Goldstein said. “If U.S. fish farms were to enter the fray, there’s no guarantee fishmeal would be sustainably or ethically sourced.”

A False Premise

The Trump administration frequently cites the statistic that 90% of seafood Americans eat is imported — the so-called “seafood deficit,” which in turn is part of the argument propelling fish farming projects. But the 90%

figure is misleading. A large percentage of the seafood consumed in the U.S. is caught here, shipped overseas for processing, then re-imported.

A study published last May in the Proceedings of the National Academy of Sciences argued that the percentage of seafood caught overseas and eaten in the U.S. is closer to 65%.

Even that figure doesn't mean "the seafood deficit is a problem," said Goldstein.

"It reflects consumer preferences," she said. "If you go to Costco and look at what people are buying and selling, Americans like to eat a lot of farmed salmon and imported shrimp. But America catches a lot of squid."

Federal regulators could also permit commercial fishers to catch species currently designated only for sport fishing and personal consumption, such as red drum, an abundant and flavorful fish.

"There are underutilized species that we could be harvesting to feed our nation," Arnesen said.



President Donald Trump's administration has expressed concern about the dubious "seafood deficit," which has helped fuel the push for fish farming. (Mark Wilson via Getty Images)

Elsewhere in the country, environmentalists support expanding aquaculture. In Maine, where the shrimp fishery was closed in 2013, fishers struggle in the winter months after the lobster season peaks. One solution, as laid out in the Blue New Deal Sen. Elizabeth Warren (D-Mass.) proposed during her failed presidential bid, is to offer state and federal incentives to spur new fish processing markets and farms to produce shellfish and seaweed.

Sims cautioned that overlapping agency jurisdictions have been an obstacle to even attempting experimental projects, and said the new executive order doesn't actually "change any of the regulations for offshore aquaculture, or the requirements for review."

"It simply mandates that the agencies be proactive in identifying areas where aquaculture could be acceptable[,] identifies NOAA as a lead agency and sets a timeline for review," he said. "The timeline is to prevent agency constipation."

But even in a best-case scenario, Goldstein said, the Trump administration order would only end up "selling off federal waters to industrial aquaculture operators with no fish to be seen for another two to three years."

"They justify this whole executive order over food security and helping coastal communities, but this does not help coastal communities at all," she said. "And they are in very, very serious trouble right now."

Arnesen said the smattering of regulatory benefits the order offers to commercial fishermen seems meant to "pacify us and shut us up." But that's not in her plans.

"We should have run a public relations campaign a long time ago," she said. She offered a preview of what the coming one will look like: "They're privatizing public waters. It's not my fish, it's your fish, I just go catch it for you."

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Climate change in deep oceans could be seven times faster by middle of century, report says

Uneven heating could have major impact on marine wildlife, as species that rely on each other for survival are forced to move

[Graham Readfearn](#)

<https://www.theguardian.com/environment/2020/may/26/climate-change-in-deep-oceans-could-be-seven-times-faster-by-middle-of-century-report-says>



Rates of climate change in the world's ocean depths could be seven times higher than current levels by the second half of this century even if emissions of greenhouse gases were cut dramatically, according to new research.

Different global heating at different depths could have major impacts on ocean wildlife, causing disconnects as species that rely on each other for survival are forced to move.

In the new research, scientists looked at a measure called climate velocity – the speed at which species would need to move to stay within their preferred temperature range as different ocean layers warm.

The study, published in the journal [Nature Climate Change](#), found different parts of the ocean would change at different rates as the extra heat from increasing levels of greenhouse gases moved through the vast ocean depths.

By the second half of the century, the study found “a rapid acceleration of climate change exposure throughout the water column”.

The study used climate models to first estimate the current rates of climate velocity at different ocean depths, and then future rates under three scenarios – one where emissions started to fall from now; another where they began to fall by the middle of this century; and a third where emissions continued to rise up to 2100.

Prof Jorge García Molinos, a climate ecologist at Hokkaido University and a co-author of the study, said: “Our results suggest that deep sea biodiversity is likely to be at greater risk because they are adapted to much more stable thermal environments.”

At present, the world's heating was already causing species to shift in all layers of the ocean from the surface to more than 4km down, but at different speeds.

But even under a highly optimistic scenario, where emissions fell sharply from now, the ocean's mesopelagic layer – from 200m to 1km down – climate velocity would change from about 6km per decade to 50km by the second half of the century. But over the same period, climate velocity would halve at the surface.

Even at depths of between 1,000 and 4,000 metres, climate velocity would triple current rates, even if emissions dropped sharply.

Prof Anthony Richardson, of the University of Queensland and the CSIRO and one of the study's 10 authors, told Guardian Australia: "What really concerns us is that as you move down through the ocean, climate velocity moves at different speeds."

This could create a disconnect for species that rely on organisms in different layers.

For example, Richardson said tuna lived in the mesopelagic layer between 200 and 1,000 metres deep, but they relied on plankton species near the surface.

He said because the planet's oceans were so large and stored so much heat, "warming already absorbed at the ocean surface will mix into deeper waters."

"This means that marine life in the deep ocean will face escalating threats from ocean warming until the end of the century, no matter what we do now."

Isaac Brito-Morales, the study's lead author and a researcher at the University of Queensland, said: "Because the deep ocean has a more stable temperature, any small increase will have an impact on species – they're more at risk than those at the surface."

Richardson added it was "concerning" their results showed, as well as different rates of climate velocity at different depths, the direction that species would need to move wasn't uniform either.

This could mean that marine park areas designed to protect different species or habitats could become compromised as species moved out of the protected areas into unprotected areas.

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'We're screwed': The only question is how quickly Louisiana wetlands will vanish, study says

<https://www.nola.com/content/tncms/live/>

May 22, 2020

Because of increasing rates of sea level rise fueled by global warming, the remaining 5,800 square miles of Louisiana's coastal wetlands in the Mississippi River delta will disappear. The only question is how quickly it will happen, says a new peer-reviewed study published Friday in Science Advances.

“This is a major threat not only to one of the ecologically richest environments of the United States but also for the 1.2 million inhabitants and associated economic assets that are surrounded by Mississippi Delta marshland,” the report concludes.

The new study reviewed the rates of sea-level rise that caused wetlands to disappear along Louisiana's coast during the 8,500-year history of the current Mississippi River delta. It found that at rates of relative sea level rise -- the combination of rising water and ground subsidence -- of between 6 and 9 millimeters a year, ancient coastal marshes would turn into open water within 50 years. At rates of 3 millimeters a year, it would take a few centuries.

The globally averaged rate of sea-level rise between 2006 and 2015 was about 3.58 millimeters a year, and that doesn't include local subsidence rates along Louisiana's coast. As a result, the state's wetlands already have exceeded a tipping point, the study's authors say.

A new study warns that sea level rise will swallow 5,800 square miles of wetlands in Louisiana. This map is the state's 2017 estimate of wetlands loss through 2067. The study says even more wetlands will disappear in either 50 years or over several centuries, depending on increases in the rate of global warming.

BY DAN SWENSON | Graphics Editor

"What it says is we're screwed," said lead author Torbjörn Törnqvist, a Tulane University geology professor, in an interview. "The tipping point has already happened. We have exceeded the threshold from which there is basically no real way back anymore, and there probably won't be a way back for a couple of thousand years."

Recent studies that show that growth of wetland plant material is keeping pace with today's rate of subsidence and sea level rise have been based on just six to 10 years of measurements. That brief period of time is not long enough to determine that wetlands can literally outgrow sea rise.

By studying the boring core record of dozens of decades and hundreds of years of ancient marsh growth and disappearance, the researchers found that marsh growth could not keep up with the rising water levels. However, the report said additional research is needed to understand how rapid sea-level rise over decades causes the wetlands to disappear.

The study does not include a map showing what the new boundary of open water will be. But Törnqvist said he expects the eventual shoreline will parallel what's known as the Baton Rouge Fault, an east-west line where land heights today are at about 15 feet above sea level. For the New Orleans area, that would be along the North Shore, somewhere near Interstate 12.

Törnqvist said the biggest question now is how long the state's wetlands will last, and what can be done to slow their disappearance.

"I don't think this is going to happen in my lifetime," he said, pointing out that he just turned 58. "But my daughter turns 10 next week, and a lot of these things are going to happen in her lifetime. I'm not saying that when she is old, we'll have no wetlands at all, but we will have massive changes."

That said, the paper is not making a case for giving up.

"It's important to highlight the fact that it still depends on our actions," Törnqvist said. "If we take appropriate actions and we can keep that rate of sea-level rise at least a little bit in check, it's likely the wetlands are still going to drown eventually, but maybe over centuries."

Those actions include reducing greenhouse-gas emissions worldwide to keep global temperatures closer to where they are now, which is about 1.5 degrees warmer than in the pre-industrial era, he said. And executing the state's coastal Master Plan of hurricane protection and wetland restoration projects, including plans to build major sediment diversions to help keep wetlands above water.

Bren Haase, executive director of the state's Coastal Protection and Restoration Authority, said the new study's findings are not surprising. The 2017 update of the coastal Master Plan estimated sea level rise alone through 2067 would range from a low of 8.6 mm per year to a high of 16.6 mm -- higher than the assumptions the paper uses.

And the CPRA's maps of what happens if restoration projects are not completed show a dramatic retreat, including the disappearance of most of the land bridge that connects eastern New Orleans to Slidell and all of the swamp around Lake Maurepas, as well as most wetlands outside of leveed areas east and west of the river south of New Orleans.

Haase said state land-loss modeling concluded that 75% of the marsh would disappear because of rising water levels. But he also said that in planning individual projects, the Master Plan used only 3 mm a year as the expected sea-level rise, similar to the sea level rate that the paper said would provide several centuries of time for wetland survival.

He said that where the plan calls for adding sediment through dredging, or by using diversions, areas along the river and barrier islands continue to be salvageable through the plan's 50-year lifetime.

The state already has begun work on the 2023 Master Plan update, and the new study will be considered in that effort, Haase said.

And he pointed out that Gov. John Bel Edwards earlier this year announced that CPRA would embark on a program to bring the state's oil and gas and petrochemical industry players together to find ways of reducing or permanently storing the state's carbon emissions, specifically because of the role those emissions play in driving sea-level rise.

While that effort has been delayed by the COVID-19 pandemic, Haase said he expects meetings to begin later this year.

John Lopez, a biologist with the Lake Pontchartrain Basin Foundation and the Restore the Mississippi Delta Coalition, said the new study will help direct the future of the master plan.

"The conclusions we draw here are that our coastal wetlands are seriously threatened, that aggressive interventions to restore and maintain our coast -- particularly through sediment diversions -- are critical, and that we must do everything possible to limit sea level rise by reducing global emissions," Lopez said. "But it's a long way from a death knell for our coast."

The wetland losses predicted by the study do raise questions about the ability of the New Orleans metropolitan area to survive, even with the post-Katrina improvements to its levee system. That system already has been rated as "high risk" by the Army Corps of Engineers because of the potential of overtopping by hurricane storm surges, which could result in hundreds of billions of dollars in damages.

"Is it feasible to have some kind of fortress out in the Gulf?" Törnqvist asked rhetorically. "I'm sure there's going to be a big debate about whether we should aim for that. But it's going to be incredibly vulnerable. If we have no wetlands left, the impacts of these storms are not going away, and sea-level rise is going to make those impacts bigger.

"It's only a matter of time until large insurers and companies that consider investing in the city look at it, and say, 'Wow, this is becoming too risky,'" he said.

John Day Jr., an emeritus oceanography professor at LSU who has studied Louisiana wetlands, says the new study bolsters his argument that the master plan does not go far enough in addressing existential issues like the future of New Orleans.

Day is a contributor to the Marais Design Strategy, a 2018 proposal to literally rebuild New Orleans over the next 100 years into a sustainable island by raising large segments of the city to 15 feet or higher above sea level, which would require temporarily relocating all structures in those areas while the material was mined from Lake Pontchartrain or elsewhere and pumped within the levee system.

The plan also calls for reinforcing the New Orleans and Jefferson lakefront along Lake Pontchartrain with a new bald cypress forest, aimed at reducing storm surge threats.

While such a plan, which would cost billions of dollars, seems unachievable, it mimics how the island city of Galveston, Texas, was elevated by 7 to 15 feet in the aftermath of a devastating 1900 hurricane.

Day also recommends dramatic changes in the state's proposed Maurepas Swamp diversion, turning it into a project that would pump far more sediment-laden water from the Mississippi into the swamp to elevate the western end of the Pontchartrain Basin. Such a project would add protection to areas as far north as Baton Rouge from hurricanes and other flood events in the future, he said.

The Törnqvist study's findings are based on a study of corings taken from 355 boreholes in locations west of New Orleans within the river's historic delta. The borings were drilled to depths of as much as 39 feet below the surface to measure deposits of sediment and organic material over time the last 8,500 years. The corings indicated that rates of relative sea-level rise approached 10 mm a year between 8,500 and 7,000 years ago and then slowly decreased to a rate of about 0.5 mm a year during the millenium before the industrial age.

Törnqvist said periods when wetlands became open water were marked by deposits of Rangia clam shell.

During the past 300 years, human changes to the Mississippi River, including the construction of numerous dams along the river's tributaries above Louisiana and the construction of levees along its path in the state, have halved the amount of new land-building sediment the river delivers to the state's wetlands. The construction of more than 10,000 miles of oil and gas canals and navigation waterways, and the extraction of oil and gas from beneath the land's surface have speeded subsidence.

Meanwhile, the dramatic increases in carbon dioxide and other greenhouse gases released into the atmosphere during the past 150 years have fueled rising temperatures that have increased ocean water heights by swelling individual water molecules. Sea-level rise has been compounded by the water added to the seas from the melting of glaciers and polar ice caps.

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Automakers fight effort to freeze fuel efficiency standards

By [Rebecca Beitsch](#) May 22, 2020

<https://thehill.com/policy/energy-environment/499227-automakers-fight-effort-to-freeze-fuel-efficiency-standards>



Some of the nation's automakers are set to intervene in a lawsuit from a conservative group challenging the Trump administration's plans to drastically reduce fuel economy standards.

The [suit from the Competitive Enterprise Institute](#) filed earlier this month argues the administration erred in requiring automakers to increase fuel economy by 1.5 percent each year instead of freezing or reducing the standards even further.

The Alliance for Automotive Innovation announced Friday that it will intervene in the suit, fighting the effort to weaken the standards.

“The auto industry remains united in its desire for yearly improvements in fuel economy and greenhouse gas reductions,” John Bozzella, president and CEO of the group, said in a statement.

“Despite calls by interest groups for flat standards, our members are committed to increasing standards that support investment in vehicles that improve fuel efficiency, and that balance affordability, safety, and the environment.”

It’s unclear how large of year-over-year improvements automakers involved in the suit are willing to make, as other manufacturers that already signed a deal with California to meet more aggressive standards did not join the rest of the industry in the intervening suit.

That includes Ford.

"We aren't participating in the Alliance's intervention because of the voluntary framework to reduce emissions that we are working on with the California Air Resources Board. We believe this path is what's best for our customers, the environment, and the short- and long-term health of the auto industry," Ford said in a statement to The Hill.

The Obama-era rules would have required 5 percent yearly improvements in fuel economy, requiring cars to reach nearly 55 miles per gallon (mpg) by 2025, as opposed to 40 mpg by 2026 under the Trump rules.

The intervention is one more chapter in a complicated series of lawsuits tied to the new rule, including those over a previous decision by President Trump to revoke a waiver given to California that allows them to set their own more stringent fuel economy standards. Those have been adopted by at least 13 states.

The agreements California has forged with four major automakers, with more expected, how much closer to what the Obama administration finalized. Some fear the latest suit will cause further division in the industry.

“I was disappointed by the announcement today. I have argued it’s in the long-term interest for the administration, California and the auto industry to be on the same page,” Rep. Debbie Dingell (D-Mich.) said in a statement.

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“Today’s action sets us further back from this goal. The parties that made the move today are the same ones that joined the Trump Administration’s lawsuit against California. The fact of the matter is the global auto market is already significantly decarbonizing. The American auto industry can either lead or be led.”

Experts say the Trump administration fuel economy rule is particularly vulnerable to legal challenge, as the government's analysis found the new standards would cost more than they would save by some \$13 billion.

New documents also show the Environmental Protection Agency proceeded with the rule over objections from staff.

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Trump anti-reg push likely to end up in court

By Rebecca Beitsch May 25, 2020 -

<https://thehill.com/policy/energy-environment/499163-trump-anti-reg-push-likely-to-end-up-in-court>



An executive order signed by President Trump directing agencies to slash regulations in order to boost the economy is likely to lead to a number of court challenges.

The Tuesday order directs agency heads to “identify regulatory standards that may inhibit economic recovery,” highlighting that regulations could be permanently or temporarily lifted in order to fight the economic fallout of the coronavirus.

But experts say speeding up the regulatory process or nixing public comment periods would likely be slammed in court unless the Trump administration can demonstrate their actions were necessary due to the pandemic.

“The problem there is those measures have to be directly related to addressing the pandemic. They can't just be political priorities the Trump administration wants to speed up and get across the finish line in the first term,” said Amit Narang, a regulatory policy advocate with Public Citizen, pointing to the requirements of the Administrative Procedures Act.

“They’re not going to be able to claim that their ideological rollbacks are needed urgently to address the coronavirus just because they’re going to create economic growth. It’s not an argument that’s going to carry water on the policy side but certainly on the legal side in court either,” Narang said.

The order may be as likely to spur eye rolls as it is to spur lawsuits, however, as some say the directive is more about messaging than affecting regulation.

Critics say even with the accelerated timeline the administration seems to be pushing, the White House has little time to accomplish much else this term.

“What are you going to do? Are you going to review the whole suite of statutes and regulations that you implement and that you've spent three-and-a-half years rolling back and then you’re going to try and get more blood from a stone? And then try to accomplish that feat by 2021? It's not going to be possible,” said John Walke with the Natural Resources Defense Council.

The Trump administration told The Hill they believe the order will withstand legal challenge.

“Statutes frequently allow an expedited regulatory process during urgent circumstances. The heart of what this administration is working to accomplish is clear: get our economy back to historic levels and get millions of Americans back to work,” the White House said by email.

The Trump administration has prided itself on pushing deregulation since nearly day one, with the president signing orders to nix two regulations for every new rule they want to issue and another requiring agencies to offset the costs of any new rules by scrapping old ones.

But Walke and others argue the administration will face hurdles with its approach.

“Trump does not want to appear helpless so he’s directing agencies to pin blame for the economy on regulations that have nothing to do with the economy. It’s plain to see that the pandemic and shelter-in-place orders are the reasons for the economic downturn,” Walke said.

The Trump order encourages the temporary suspension of regulations, a move already in use by the Environmental Protection Agency (EPA).

The agency in late March issued a temporary order, though it has no set end date, announcing it would not fine companies that stop monitoring their pollution emissions — something required by both the Clean Air Act and the Clean Water Act.

The EPA says companies must document when they stopped monitoring and why the coronavirus was the cause to avoid fines down the road, but environmental groups and states have already sued, arguing the damage will have already been done, risking the health of residents near industrial operations.

It's a playbook that could easily be adopted by other agencies, who might consider lifting private lending restrictions, regulations on food safety like inspection line requirements at meat packing plants or suspending contract rules that require agencies to pick the most competitive bid.

Trump, however, appears hopeful that those temporary suspensions might be permanent.

"We want to leave it that way," he said at a Cabinet meeting Tuesday. "In some cases we won't be able to, but in other cases we will."

Opponents say that would be illegal.

"That's rulemaking 101 that you cannot just make these things permanent," Narang said.

Sean Moulton, a senior policy analyst with the Project on Government Oversight, said Trump's attempt to issue a "get out of jail free card" won't be able to bypass the lengthy rulemaking process, even in the name of economic recovery.

"You have to go through the rulemaking process, do research, issue a proposal, offer a public comment period, read the public comments, you have to respond to the public comments, you have to explain the changes you're making, and if you ignore data just because you don't like it, people can take you to court," he said.

What worries critics the most is that agencies will suspend enforcement of regulations, much like the EPA has done with its temporary order.

A number of studies have found agencies under the Trump administration have been less aggressive about going after companies that break the law by issuing fines or enforcement actions. That has been the case at the Food and Drug Administration, the EPA, the Consumer Finance Protection Board and many others.

"That's the part that gives me the greatest concern, the idea of nonenforcement and telling agencies without any real basis or explanation that more lax enforcement will help us economically," Moulton said. "That's not to say you can't drag them into court but it takes time."

Conservatives groups have praised the memo.

- [The 10 Senate seats most likely to flip](#)
- [Stakes high for Collins in coronavirus relief standoff](#)

“Many of the problems we’re experiencing today are decades in the making. They stem from well-meaning but tragically harmful laws and regulations that have accumulated over many years. This isn’t about politics, it’s about breaking barriers,” the Charles Koch-funded Americans for Prosperity wrote in a statement, saying the order would “empower the country to recover stronger.”

But critics of the executive order said the White House should be focused on addressing the core health issues that underlie the economic fallout.

“This crisis needs to be addressed through the administration with real public health measures,” Narang said. “Instead we get deregulation as an answer to the pandemic that makes no sense and is a complete distraction.”

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Virus Crisis Exposes Cascading Weaknesses in U.S. Disaster Response

By [Christopher Flavelle](#)

May 6, 2020

<https://www.nytimes.com/2020/05/22/climate/fema-volunteer-disaster-response.html>

WASHINGTON — For decades, the backbone of the nation’s disaster response system — and a hallmark of American generosity — has been its army of volunteers who race toward danger to help shelter, feed and counsel victims of hurricanes, wildfires and other calamities.

However, the Covid-19 pandemic has exposed a critical weakness in this system: Most volunteers are older people at higher risk from the virus, so this year they can’t participate in person. Typically more than five million volunteers work in disaster relief annually, said Greg Forrester, president of National Voluntary Organizations Active in Disasters, an association of nonprofit groups, but this year he expects the number to decline by 50 percent.

Asked how disaster relief efforts can meet the usual demand with half as many people, Mr. Forrester said: “You won’t.”

It is the latest in a cascading series of problems facing an already fraying system ahead of what is expected to be an unusually severe hurricane season combined with disasters like this week’s dam collapse and flooding in Michigan, a state particularly hard hit by Covid-19.

The Federal Emergency Management Agency is running short of highly trained personnel as the virus depletes its staff. Longstanding procedures for sheltering victims in gymnasiums or other crowded spaces suddenly are

dangerous because they risk worsening the pandemic. And traditional agreements among states to help each other if crisis strikes are now sputtering as states remain wary of exposing their own people to the virus.

It amounts to one of the most severe tests in decades for a system designed to respond to local or regional storms or other disasters — not a crisis on a national scale. Yet FEMA has been forced to take a primary role in Covid-19, deploying more than 3,000 staff nationwide and effectively running its first 50-state disaster response.

“A pandemic complicates every aspect of disaster planning and response in a way that we have never experienced before,” said Chris Currie, who leads the team at the nonpartisan Government Accountability Office that looks at emergency management. “You’re only as good as the weakest link.”

FEMA says it has taken steps to prepare for hurricane season, including expanding its coordination center in Washington, hiring staff and working with state and local officials and nonprofits to adapt to the pandemic. “We have not taken our eye off the ball about handling other disasters that may occur during this time,” Peter Gaynor, FEMA’s administrator, said in a briefing this month.

On Wednesday, the agency said it intended to avoid, as much as possible, sending relief staff into disaster zones this year, instead relying on “virtual” assistance such as talking to survivors by phone, using photos or other documentation of storm damage to approve claims and meeting with state and local counterparts online rather than in person.



Peter Gaynor, FEMA’s administrator, at a White House coronavirus briefing in March. Al Drago for The New York Times

Volunteers are key to America's disaster response, distributing supplies, clearing debris, and rebuilding homes. In interviews, executives with the nonprofit organizations like the Salvation Army that help organize volunteer teams said that, in normal years, they would be training and equipping thousands of people and flying them to whichever part of the country needs help, then housing and feeding them in close quarters.

Suddenly, none of that works.

Three-quarters of the Salvation Army's volunteers for most disasters are 65 or older, according to Jeff Jellefs, the group's disaster coordinator for the southern United States. For those people, "We're telling them, maybe this isn't the best time for you to deploy," he said, given that older people are at particularly high risk from Covid-19.

The consequences could be enormous: The Salvation Army has more than 2.7 million volunteers annually for everything from disaster response to after-school programs and vocational programs. Disaster volunteers worked 3.5 million hours during the 2017 hurricane season.

The Salvation Army is considering using more paid staff and housing them in hotels rather than dormitories. But that's expensive, Mr. Jellefs said, and the pandemic has closed many of the Salvation Army's thrift stores, which bring in almost in \$600 million annually in sales.

Habitat for Humanity, which last year helped rebuild or repair almost 700 homes damaged by disasters in the United States, also gets many of its volunteers from older Americans, according to Jonathan Reckford, the chief executive officer. Given the risks of air travel combined with the danger that volunteers inadvertently bring the disease into a community they're trying to help, Mr. Reckford said Habitat for Humanity had hit pause, for now, on deploying any volunteers.

Overall, the organization fielded 1.2 million volunteers last year for all its work. It did not break out a number for disaster response.

Climate Fwd: *What on earth is going on? Get the latest news about climate change, plus tips on how you can help.*

That means its group quite likely won't be able to respond the way it usually does if a hurricane were to strike the United States this year. "It's our greatest fear right now," Mr. Reckford said.

If a disaster struck a part of the country that was under large-scale quarantine, "we would really have to back away from some of our response in those areas," Mary Casey-Lockyer, a senior associate with the disaster health program for the American Red Cross, said during a webinar for nonprofits last week. The Red Cross deployed 9,000 workers to large disasters last year; it expects to deploy half as many volunteers as usual in person this year.

“I don’t want to imagine a world where it’s so bad we can’t respond,” added Cathy Earl, director of disaster response for the United Methodist Committee on Relief, which has 10,000 volunteers around the country who work on disaster response. She said it was hard to project how many volunteers would be deployed this year, but called a 50 percent decrease “a reasonable estimate.”

The volunteer shortage threatens to ripple through the nation’s disaster response system, exacerbating other problems.

One spillover effect will be financial. Under federal law, state or local governments typically have to put up \$25 for every \$75 the federal government provides for disaster relief. But they’re allowed to count the services of volunteers toward that amount, Mr. Forrester said.

- Frequently Asked Questions and Advice

Updated May 20, 2020

- *How can I protect myself while flying?*

If air travel is unavoidable, there are some steps you can take to protect yourself. Most important: Wash your hands often, and stop touching your face. If possible, choose a window seat. A study from Emory University found that during flu season, the safest place to sit on a plane is by a window, as people sitting in window seats had less contact with potentially sick people. Disinfect hard surfaces. When you get to your seat and your hands are clean, use disinfecting wipes to clean the hard surfaces at your seat like the head and arm rest, the seatbelt buckle, the remote, screen, seat back pocket and the tray table. If the seat is hard and nonporous or leather or pleather, you can wipe that down, too. (Using wipes on upholstered seats could lead to a wet seat and spreading of germs rather than killing them.)

- *What are the symptoms of coronavirus?*

Common symptoms include fever, a dry cough, fatigue and difficulty breathing or shortness of breath. Some of these symptoms overlap with those of the flu, making detection difficult, but runny noses and stuffy sinuses are less common. The C.D.C. has also added chills, muscle pain, sore throat, headache and a new loss of the sense of taste or smell as symptoms to look out for. Most people fall ill five to seven days after exposure, but symptoms may appear in as few as two days or as many as 14 days.

- *How many people have lost their jobs due to coronavirus in the U.S.?*

Over 38 million people have filed for unemployment since March. One in five who were working in February reported losing a job or being furloughed in March or the beginning

of April, data from a Federal Reserve survey released on May 14 showed, and that pain was highly concentrated among low earners. Fully 39 percent of former workers living in a household earning \$40,000 or less lost work, compared with 13 percent in those making more than \$100,000, a Fed official said.

- *Is 'Covid toe' a symptom of the disease?*

There is an uptick in people reporting symptoms of chilblains, which are painful red or purple lesions that typically appear in the winter on fingers or toes. The lesions are emerging as yet another symptom of infection with the new coronavirus. Chilblains are caused by inflammation in small blood vessels in reaction to cold or damp conditions, but they are usually common in the coldest winter months. Federal health officials do not include toe lesions in the list of coronavirus symptoms, but some dermatologists are pushing for a change, saying so-called Covid toe should be sufficient grounds for testing.

- *Can I go to the park?*

Yes, but make sure you keep six feet of distance between you and people who don't live in your home. Even if you just hang out in a park, rather than go for a jog or a walk, getting some fresh air, and hopefully sunshine, is a good idea.

- *How do I take my temperature?*

Taking one's temperature to look for signs of fever is not as easy as it sounds, as "normal" temperature numbers can vary, but generally, keep an eye out for a temperature of 100.5 degrees Fahrenheit or higher. If you don't have a thermometer (they can be pricey these days), there are other ways to figure out if you have a fever, or are at risk of Covid-19 complications.

- *Should I wear a mask?*

The C.D.C. has recommended that all Americans wear cloth masks if they go out in public. This is a shift in federal guidance reflecting new concerns that the coronavirus is being spread by infected people who have no symptoms. Until now, the C.D.C., like the W.H.O., has advised that ordinary people don't need to wear masks unless they are sick and coughing. Part of the reason was to preserve medical-grade masks for health care workers who desperately need them at a time when they are in continuously short supply. Masks don't replace hand washing and social distancing.

- *What should I do if I feel sick?*

If you've been exposed to the coronavirus or think you have, and have a fever or symptoms like a cough or difficulty breathing, call a doctor. They should give you advice on whether you should be tested, how to get tested, and how to seek medical treatment without potentially infecting or exposing others.

- *How do I get tested?*

If you're sick and you think you've been exposed to the new coronavirus, the C.D.C. recommends that you call your healthcare provider and explain your symptoms and fears. They will decide if you need to be tested. Keep in mind that there's a chance — because of a lack of testing kits or because you're asymptomatic, for instance — you won't be able to get tested.

- *How can I help?*

Charity Navigator, which evaluates charities using a numbers-based system, has a running list of nonprofits working in communities affected by the outbreak. You can give blood through the American Red Cross, and World Central Kitchen has stepped in to distribute meals in major cities.

As a result, fewer volunteers means cities, counties and states need to come up with more of their own money to get federal aid.

But local governments are already struggling financially from the virus. Counties alone have seen \$144 billion in lost income and increased expenditures, more than one-fifth of their total budgets, according to the National Association of Counties. “Our costs are skyrocketing and our revenues are plummeting,” said Paul Guequierre, a spokesman for the association.



Volunteers arranged cots at the Dallas Convention Center for people displaced by Hurricane Harvey in 2017. Jim Wilson/The New York Times

At the same time, the federal government is asking local officials to take on new tasks.

One of the toughest challenges will be evacuating and sheltering people without spreading the virus. This week following the dam collapse in Michigan, Gov. Gretchen Whitmer acknowledged that social distancing in shelters would be difficult.

This week FEMA advised state and local governments to find backup sources for supplies, find ways to distribute them without physical contact, figure out how to stop disaster survivors from gathering in groups, and to do all that with “diminished support” from volunteers.

In its new guidance, FEMA also laid out a host of new challenges facing disaster shelters. Local officials, it said, must find more space, and come up with a plan to shelter people with Covid-19.

FEMA even urged local officials to revise their plans for dealing with disaster victims’ pets, since spacing rules at shelters means there might not be room for them.

When states don’t have enough people to respond to a disaster, they usually start by asking other states to send their own emergency management teams. But with Covid-19, “They’re not sure what they might need in their own states,” said Joyce Flinn, Iowa’s emergency management director and head of the committee at the National Emergency Management Association that oversees the mutual-aid system.

When those options prove inadequate, cities and states are meant to turn to FEMA for support. However, the agency was already stretched thin as climate change makes disasters more frequent and intense. The virus crisis has stretched it further.

Brock Long, who headed FEMA during the catastrophic hurricanes and wildfires of 2017 and 2018, said there was only so much the agency's own people could do. "They're like the sixth man coming off the bench in a basketball game, down by 20, and being told to win the game," Mr. Long said. "We win and lose together."

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Revenge of the Obamacrats

Obama's top environmental official wanted nothing to do with politics after leaving the government. What did it take to bring her back?

By [Miranda Green](#)

<https://www.theatlantic.com/politics/archive/2020/05/gina-mccarthys-return-politics-after-obama-tenure/610144/>

May 24, 2020

Sarah Blesener / The New York Times / Redux

Updated at 6:53 p.m. ET on May 24, 2020

Washington legend has it that bureaucrats and political operatives overwhelmingly stay in issue advocacy or politics after their bosses leave office. But that notion is decades out-of-date. These days, many top officials who leave the D.C. swamp go directly to the private sector—and are paid handsomely to do so.

More of former President Barack Obama's top aides entered the private sector than from any other administration in the past four decades, including those of Republicans George W. Bush and Ronald Reagan, according to Kathryn Tenpas, a nonresident senior fellow at the Governance Institute at the Brookings Institution. Former Obama officials took high-paying jobs at companies including Amazon, Uber, Morgan Stanley, and Lockheed Martin.

Yet as Trump's aggressive rollback of Obama-administration policies has continued, several former Obama officials who went into academia or took private-sector jobs have since returned to politics or advocacy work.

[Read: How to destroy a government](#)

Take Gina McCarthy, who spent seven chaotic years in Washington, four of them as the head of the Environmental Protection Agency under Obama. McCarthy was happy to pass the first years of the Trump

administration in Boston, where she got to ride her bike to work every day as a professor at Harvard's T. H. Chan School of Public Health.

But although she had always expected some shifts after Trump won, she hadn't anticipated the speed with which his administration would dismantle environmental protections. Her Trump-appointed successors at the EPA announced changes to federal standards almost daily. By June 2019, they had done away with the Obama-era regulation to curb carbon emissions from power plants, and set their sights on redrafting a rule to allow cars to discharge more polluting gases—a change that the auto industry itself largely opposed. But late last year, when a rewrite of the Mercury and Air Toxics Standard, which limits the levels of mercury emitted from power plants, seemed imminent, McCarthy decided that she was ready to make a change.

So when the Natural Resources Defense Council, a leading environmental-advocacy nonprofit that had been searching for a new president, called her last fall, McCarthy said she was in.

That sort of move is unusual, Jeff Hauser, the founder and the director of the Revolving Door Project, told me. "It's become increasingly rare to see individuals [hold] a high government office and move into issue advocacy. There's become a norm that it is both acceptable and expected that people will leave public service to 'make some real money,'" Hauser said. "That reflects both parties becoming increasingly comfortable with the revolving door [between] private-sector and political appointments."

Yet McCarthy wasn't alone: Last June, former Interior Secretary Sally Jewell became the interim head of the Nature Conservancy, the top environmental-lobbying spender, which takes in more money than the American Cancer Society. Tina Tchen, a former chief of staff to first lady Michelle Obama, initially joined a law firm before taking a job leading the Time's Up Legal Defense Fund late last year. And former administration officials such as Elissa Slotkin and Lauren Underwood ran for congressional seats in 2018—and won.

People who leave the government for the private sector are typically driven by money and opportunity—which explains why so many Obama officials went to Silicon Valley, Max Stier, the president and the CEO of the Partnership for Public Service, told me. "The reality is there are more for-profit opportunities for people than not-for-profit," he said. The former officials who decided, instead, to stick it out in (or rejoin) the less remunerative world of politics and activism were likely spurred on by the dramatic operational and regulatory shifts seen in Trump's White House, Neera Tanden, the president of the liberal think tank the Center for American Progress, told me.

"Many people recognize the existential threat to progressive issues and progressive values [caused] by the Trump administration," Tanden said. "And it has called a lot of people into the battle."

McCarthy's NRDC has emerged as one of the most aggressive challengers to the Trump administration's environmental policies. The organization's political arm, the NRDC Action Fund, plans to spend more than \$5 million on federal-election efforts by June. The Action Fund's political-action committee has donated more to candidates this election cycle than most other environmental organizations, topping the former Democratic

candidate Tom Steyer's group, NextGen Climate Action. Since Trump took office, the NRDC has sued his administration more than 100 times over a range of deregulatory actions and won more than 90 percent of the cases that have been resolved. Its victories include reinstating a ban on oil drilling in the Arctic and penalties for automakers who violate emissions rules.

"I had never thought that it was going to be as much of a frontal attack on everything the [Obama] administration did," McCarthy told me. "I just couldn't let it go."

Read: How the U.S. protects the environment, from Nixon to Trump

The Trump administration's actions on the mercury rule especially infuriated McCarthy. Mercury is a powerful neurotoxin that can lead to impaired vision, muscle weakness, and changes in mental function. Children and unborn infants are the most vulnerable. As Obama's last EPA head and a top air-pollution official at the agency before that, McCarthy was intimately involved in drafting the rule, which she said was broadly accepted by all parties.

"I had been working on mercury standards for 12 years," she told me. "Who doesn't know that mercury is bad for you? It's the origin of the phrase *mad as a hatter*."

The EPA finalized changes to the mercury rule on April 16, declaring it not "appropriate and necessary." Industry groups and environmentalists alike had opposed alterations. There's "no basis to repeal these important and long-overdue" protections, Exelon, a major utility company, wrote to regulators in a 2019 public comment. The disagreement between the two administrations is based on semantics and legalese more than the regulation itself. Although the Trump administration did not reverse the mercury rule entirely, the modifications were intended to make clear that Trump officials disagree with the Obama administration's basis for drafting it in the first place, and that the new rule is "correcting flaws" in the logic. They say that the costs of complying with the mercury rule would exceed the environmental benefit. Environmentalists worry that the changes could limit regulators' ability to control toxins in the future.

The Trump administration's squabbling over the rule drove McCarthy "absolutely nuts," she said. "That's when I realized what they were doing made no sense from a standard-setting process. It was just to destroy everything that had been done before. It had no explanation otherwise."

Maintaining a healthy environment is a "key component" of Trump's "America first" agenda, an EPA spokesperson countered in an email. "EPA will continue to move forward on this agenda, and we hope NRDC under Gina McCarthy's leadership can support us in this important mission," the spokesperson said.

A lifelong public servant with a thick Massachusetts accent and a blunt style, McCarthy is not a reflexive partisan. For much of her career, she held state environmental-agency positions in Massachusetts and Connecticut—roles in which she served under Democrats and Republicans, including then–Massachusetts

Governor Mitt Romney. She came to Washington to work in the EPA's air-and-radiation office in 2009, before Obama nominated her to lead the agency in 2013.

According to Jewell, who served in Obama's Cabinet at the same time as McCarthy, officials' shift to activism is about helping the broader progressive agenda while using the scientific and policy-building skills they developed as government officials. "Those of us who have been privileged to deeply understand what's at stake and what can be done about it feel an obligation to be part of the solution," Jewell told me.

To be sure, McCarthy and her fellow bureaucrats-turned-activists aren't exactly living in poverty. And although compensation in the nonprofit sector (and professional politics) is much lower than in the private sector, tons of money is still sloshing through the system; large nonprofits such as NRDC often spend tens or hundreds of millions of dollars each year.

"It's typical for environmental lobbyists to put a white hat on themselves and act like they are doing something different. But they are a huge environmental moneymaking corporation," said Kathleen Sgamma, the president of the Western Energy Alliance, a group that represents fossil-fuel companies. "I don't know what Gina McCarthy is making, but I'm sure she is making lavish money. That's not coming from environmental activists on the streets asking donors for five bucks ... For her to suggest she is doing anything different than a corporate lobbyist is spin at best."

NRDC certainly has the money to push its agenda. Through the group's political arm, McCarthy will have millions to put toward endorsing and advertising for candidates in key 2020 races and promoting the ultimate goal: unseating Trump. The fund budgeted \$6.2 million for election and lobbying efforts in fiscal 2018, ahead of the midterms. This money, which also supports voter-turnout efforts, can make a significant difference in close House and Senate races. In 2020, the NRDC Action Fund is planning to more than double its previous budget, and intends to raise and donate \$200,000 to candidates through its PAC. McCarthy was originally planning to be a regular figure on the campaign trail in the lead-up to the election, but she had to suspend her spring tour of battleground states because of the coronavirus pandemic. Organizers say that they'll consider a modified in-person tour if it's safe to hold public events before November. McCarthy is also helping the Democratic National Committee draft its official climate platform ahead of the party's convention, which has been rescheduled for August 17.

McCarthy doesn't think of the rollbacks of her work at the EPA—or even the attacks from her critics—as a personal affront. But she sees her job as deeply personal nonetheless.

"We could really risk the future of my grandchildren," she said. "And so you sit there and think, *Okay, how old are they going to be in 2050?* You know, they're going to be, like, babies still, in the course of life. Everything that I thought I was working towards, which is really protecting my family and other families from damage from pollution, particularly—that was all at risk. And I couldn't sit on the sidelines anymore."

We want to hear what you think about this article. [Submit a letter to the editor or write to letters@theatlantic.com](mailto:letters@theatlantic.com).

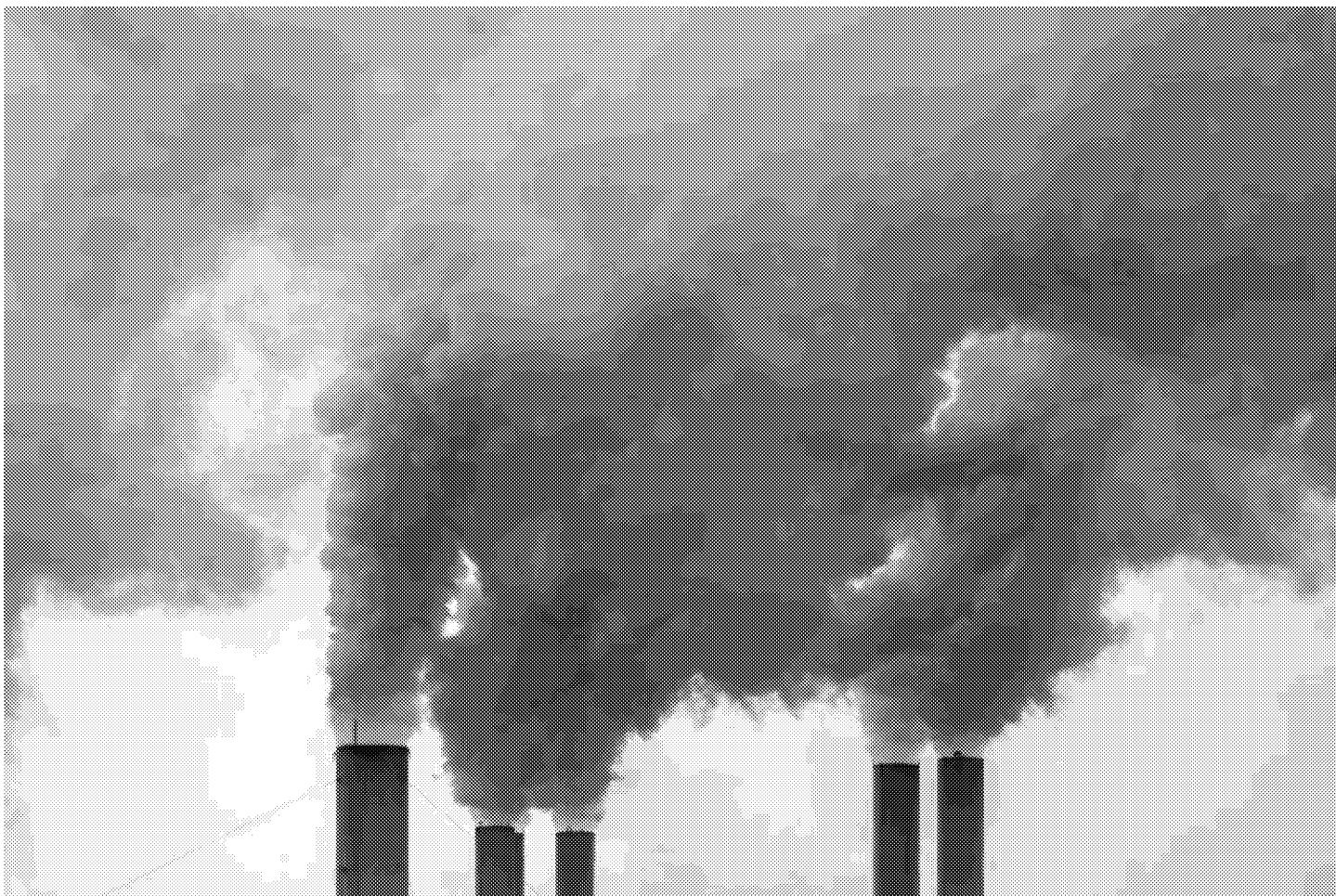
Miranda Green is a freelance reporter covering California and the West.
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Trump's EPA Wants to Weaken Science-Based Rules for Toxic Air Pollutants

[By Daniel Ross](#)

<https://truthout.org/articles/trumps-epa-wants-to-weaken-science-based-rules-for-toxic-air-pollutants/>

May 24, 2020



Environmental groups fear the agency will cave to pressure from state regulators and chemical industry groups.
Alexandros Maragos / Getty Images

Ethylene oxide is a particularly dangerous chemical that's both extremely flammable and potentially highly toxic to humans. Just a brief exposure to enough ethylene oxide gas can trigger vomiting and diarrhea, and respiratory problems that can damage the lungs. Long-term exposures to the chemical have been linked to cancers, reproductive problems, irreversible and heritable genetic changes, and neurotoxicity.

Despite its volatility and toxicity, ethylene oxide is used ubiquitously in all sorts of industrial processes, from the manufacture of ethylene glycol — which is used to make antifreeze, among other products — to the fumigation of agricultural products and the sterilization of medical equipment.

Just how widely used is it? The National Air Toxics Assessment shows the cancer risk from air pollution broken down into individual U.S. census tracts. Of the 109 census tracts in the latest assessment with a cancer risk from air pollution higher than the Environmental Protection Agency's (EPA) upper limit, 91 percent of the risk comes from just three pollutants, one of which is ethylene oxide.

Because of its dangers, ethylene oxide has been at the center of a protracted years-long battle between environmentalists, industrial workers impacted fence-line communities, and federal and state regulators. This battle has recently swung into sharp focus once again. The EPA is in the process of finalizing an important

hazardous air emissions rule governing ethylene oxide releases at facilities like chemical manufacturing plants. Environmental groups fear the agency will cave to pressure from influential state regulators and chemical industry groups, and sign off on a rule that fails to adequately protect public health.

All this is playing out against an administration that environmentalists say has not only sought to broadly dilute scientific standards across a swath of agencies, but also uses the cloak of distraction caused by the COVID-19 pandemic to weaken the existing federal regulatory framework.

“This is a huge, bombshell issue — this is a more potent carcinogen than benzene,” said Neil Carman, the Texas-based clean air director of the Sierra Club. “They’re trying to change the toxicology of this very dangerous chemical.”

“Pull the Rug Out of Health-Based Science”

At the end of March, the EPA’s Office of the Inspector General (OIG) issued a damning report that found the agency had failed to provide public meetings and other outreach efforts to educate residents living near 16 of the 25 highest-priority ethylene oxide-emitting facilities — including chemical manufacturing plants and commercial sterilization facilities — of the associated risks.

In response, EPA Administrator Andrew Wheeler formally requested the OIG to rescind the report — a move the OIG rejected. But in the near-term at least, these actions can be traced back to 2016, when the EPA released its Integrated Risk Information System (IRIS) measure — a federal program to identify human health hazards — of the risks associated with ethylene oxide exposure. The analysis found that the inhalation of the chemical is “carcinogenic to humans.”

There are, however, attempts to weaken this federal risk estimate by undermining the science that underpins it, said Jennifer Sass, a senior scientist with the Natural Resources Defense Council, calling this approach “systemic.” The locus of these efforts can be found in Texas, an ethylene oxide heartland, housing within its state borders 60 of the 355 ethylene-oxide-emitting plants included in the EPA’s 2014 air toxics assessment.

Officials from the Texas Commission on Environmental Quality (TCEQ) have spent the past few years systematically critiquing the EPA’s 2016 risk estimate, and in the process, aligning itself with industry groups like the American Chemistry Council, an organization that has called this assessment “significantly flawed” and one that causes “unnecessary alarm.”

Indeed, last year the TCEQ posted its own draft ethylene oxide risk assessment — one that finds a risk estimate for lymphoid cancer over 3,000 times less than EPA’s, according to experts. To reach this figure, the TCEQ used a model “rejected” by the EPA and its independent science advisory board which resulted in the TCEQ “drastically underestimating the risks of ethylene oxide exposure,” explained former EPA staff scientist Jennifer Jinot, who contributed to the agency’s 2016 cancer assessment, in an analysis for the University of California San Francisco.

The TCEQ's final risk assessment was published this month. According to agency spokesperson Brian McGovern, the revised version responds to public comments from the first draft and has been peer reviewed by an "independent expert peer review panel."

Nevertheless, it still doesn't adequately protect human health, said Carman, calling the assessment a "huge gift" to the Texas petrochemical industry. What's more, experts fear this assessment will have a direct impact on federal air emissions standards through the Miscellaneous Organic Chemical Manufacturing (MON) rule, which regulates releases for facilities that process organic chemicals like ethylene oxide.

The proposed federal rule is currently being revised, with a deadline for completion by May 29. Earlier this year, 20 senators signed a letter addressed to Wheeler which outlines a number of problems with the proposed rule, including how it takes the "unprecedented approach" of using a risk factor for cancer that is "five times weaker" than what the EPA's own science recommends.

Environmentalists also point to a direct line between the TCEQ and the EPA that exists through Michael Honeycutt, a chief toxicologist for the TCEQ whose prior public criticism of the need for tighter environmental regulations has led to questions over his professional credibility.

Former EPA Administrator Scott Pruitt appointed Honeycutt as chair of EPA's Science Advisory Board — a move that environmentalists say was designed to help facilitate the administration's deregulatory efforts. Indeed, last year, Honeycutt sent a letter to Wheeler calling the EPA's 2016 ethylene oxide cancer risk assessment "unreasonably conservative." In recent emails the Sierra Club uncovered through freedom of information act requests, Honeycutt urges a senior EPA official involved in the MON rule-making process to review the TCEQ's own ethylene oxide draft risk assessment.

In response to questions about Honeycutt's influence on the federal rule-making process for ethylene oxide emissions, EPA spokesperson Corry Schiermeyer wrote that the agency is "committed to using the best available science to guide our regulatory decisions."

Truthout asked the TCEQ the same question. In response, McGovern wrote that the agency performed its own ethylene oxide assessment for "state regulatory purposes," but that "other organizations are free to use it if they wish."

These "collateral attacks," however, are being waged because the law "really does have strong protections," said Emma Cheuse, a staff attorney with Earthjustice, highlighting the federal Clean Air Act as a potential legal buffer. "They're trying to pull the rug out from under health-based science."

"Ethylene Oxide Monster"

A central concern for environmentalists is how many ethylene oxide-emitting facilities sit near the fence-line of low-income, marginalized communities already struggling with disproportionately high levels of pollution. Just

take the proposed Formosa petrochemical plant in what is known as “cancer alley,” a heavily industrialized corridor on the banks of the Mississippi River between Baton Rouge and New Orleans.

The gleaming industrial fortresses of this infamous community are nestled in the heart of St. John the Baptist Parish — a poor, largely African American community where the cancer rate is 50 times the national average, and where the air pollution is already among the worst in the nation. Formosa’s \$9.4 billion facility — a behemoth of a complex comprising 14 separate plants — is a stark embodiment of this dynamic.

In January, the state issued permits to Formosa allowing it to emit ethylene oxide at levels among the highest in the country, said Corinne Van Dalen, New Orleans-based staff attorney for Earthjustice, who added that the proposed plant will be situated just one mile from an elementary school. “They’re creating a new ethylene oxide monster,” she said.

What makes the state especially attractive to companies like Formosa, said Van Dalen, is that the ethylene oxide ambient air quality standard in Louisiana is “nowhere near as stringent” as the EPA’s acceptable risk threshold suggests it should be. “This allows companies to use lower state standards as a shield,” said Van Dalen, explaining how the federal government has left it to the states to determine ambient air quality standards for toxic chemicals. “Why does the [federal government] allow this charade to go on at the expense of people’s lives?” she asked.

Certain medical sterilization plants are proving similarly problematic for fence-line communities. Indeed, four largely Latinx and African American census tracts surrounding the ethylene oxide-using Medline assembly plant in Chicago have an elevated cancer risk from air pollution, according to the EPA. Just last year, a study funded (but non-peer reviewed) by the Centers for Disease Control and Prevention found that residents who live a half-mile from the facility have 50 percent higher amounts of ethylene oxide in their bloodstream than residents who live farther away.

“Facilities emitting dangerous chemicals like ethylene oxide should not be located near homes, schools, businesses, parks or other areas frequently used by the public,” Susan Buchanan, director of the Great Lakes Center for Children’s Environmental Health at the University of Illinois Chicago and the lead researcher on the study, told the Chicago Tribune.

A former firefighter and paramedic named John Bardi, who is also a member of the local community group Stop EtO in Lake County, doesn’t want to see the Medline facility — a big employer in the area — closed down.

Rather, Bardi — who has lived within one mile of the plant for nearly 25 years — would like to see its ethylene oxide emissions curtailed, and he voices frustration with what he sees as a lack of political interest in Medline compared with the nearby Sterigenics medical sterilization facility, surrounded by more affluent communities. Sterigenics was shuttered last year after sustained public outcry into its toxic air releases.

“That is something that only our elected officials can answer,” Bardi wrote, in a statement. “But regardless of where they may try to shift the blame for our ongoing pollution problem, it is undeniable that the minority and low-income residents in Lake County, Illinois, and across the country suffer disproportionate harm from pollution while the corporations that are doing the polluting are enjoying record profits.”

Sterigenics has other plants around the country, like its facility in suburban Atlanta which was closed down due to high ethylene oxide emissions and a 2018 explosion at the plant. In response to the increased demand for personal protective equipment as a result of the COVID-19 pandemic, however, a federal judge recently ruled that the company was permitted to resume operations indefinitely.

These developments, when combined with attempts to “roll back” the stricter proposed ethylene oxide emissions standards, raise “serious public health concerns,” said Carman. “And the public is being kept in the dark.”

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EPA Won't Tighten Air Standards; Experts Warn of Health Issues



<https://www.publicnewsservice.org/2020-05-26/climate-change-air-quality/epa-wont-tighten-standards-experts-warn-of-health-issues/a70330-1>

May 26, 2020

LITTLE ROCK, Ark. -- The Environmental Protection Agency says it plans to leave current limits on air pollution unchanged, but critics say the particle pollution standards aren't strict enough and put human health at risk.

John Bachmann is a former associate director for science policy at the EPA's Office of Air Quality Planning and Standards and current member of the Environmental Protection Network. He said there is mounting evidence particulate matter can cause serious harm - even in small amounts.

"What EPA has found over the years is there is a casual relationship between fine particles, mortality, hospital admissions - especially for people who are elderly, who have pre-existing conditions, especially cardiovascular disease," Bachmann said.

The EPA has argued the current science doesn't prove that reducing particulate matter can improve public health. The agency is holding a [public hearing via teleconference](#) on the proposal to retain the National Ambient Air Quality Standards for Particulate Matter on Wednesday.

Bachmann said the decision is a departure from the norm, noting the agency historically has tightened air-quality standards every time they were up for review.

"Starting in 1997, if you want to look at it that way, the data got stronger, and in each year, either new or more stringent standards were set," he said.

He said the decision potentially could lead to more chronic health conditions and premature deaths in communities with higher levels of air-pollution exposure, and said preliminary research indicates survivors of serious COVID-19 illness may be more susceptible to air pollution.

"So in both directions, you have COVID making people more susceptible, air pollution - if you've been exposed to it for several years - making people more likely to die of COVID," he said. "It's a terrible combination."

The deadline to [submit public comments](#) on the EPA's proposal to maintain current air-pollution standards is June 29.

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Communities of Color Called Most At Risk from EPA's Air Stance



<https://www.publicnewsservice.org/2020-05-26/climate-change-air-quality/communities-of-color-called-most-at-risk-from-epas-air-stance/a70331-1>

May 26, 2020

RALEIGH, N.C. -- The [Environmental Protection Agency](#) says it plans to leave current limits on air pollution unchanged, but critics say the particle pollution standards aren't strict enough and put human health at risk.

Mustafa Santiago Ali is a member of the Environmental Protection Network and Vice President of Environmental Justice for the National Wildlife Federation. He said more than 100,000 deaths in the U.S. each

year can be attributed to air pollution.

"And we know because of the location of communities of color, and lower-wealth communities and indigenous peoples that they are the ones who are located very closely to many of these polluting facilities," Ali said.

The EPA has argued that current science doesn't prove reducing particulate matter can improve public health. The agency is holding a [public hearing via teleconference](#) on the proposal to retain the National Ambient Air Quality Standards for Particulate Matter on Wednesday.

Ali said numerous studies have shown people of color tend to have higher rates of chronic health conditions such as heart disease and lung disease from breathing in higher levels of air pollution.

"Many of these communities are medically underserved, they are food deserts," he said. "With all of the information that the Environmental Protection Agency and a number of the other agencies and departments have, we know that these communities are going to be disproportionately impacted."

He said the coronavirus pandemic is creating an additional burden on already vulnerable communities.

"We also now know that those also make us more vulnerable to COVID-19. So there's a double whammy that's going on inside of our most vulnerable communities that are labeled as frontline communities or environmental justice communities," Ali said.

[Public comments on the EPA's proposal](#) to maintain current air-pollution standards must be received before June 29.

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US EPA opens consultation on isothiazolinones draft review

Comments invited by 13 July deadline

26 May 2020

<https://chemicalwatch.com/119045/us-epa-opens-consultation-on-isothiazolinones-draft-review>

The US EPA has released draft human health and ecological risk assessments for five isothiazolinones, which are open for public comment.

They are part of a routine review of the rodenticides' registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (Fifra), which evaluates the health and safety assessments of approved antimicrobials every 15 years.

Isothiazolinones are used as preservatives in a wide range of products, including paints and cosmetics.

The EPA's assessments cover:

- methylisothiazolinone/chloromethylisothiazolinone (MIT/CMIT);
- octhiline (OIT);
- benzisothiazolin-3-one (BIT);
- 1,2-benzisothiazol-3(2H)-one,2-butyl (BBIT); and
- 3(2H)-isothiazolone, 4,5-dichloro-2-octyl- (DCOIT).

The agency has raised some concerns over inhalation and dermal exposures to all of the chemicals, either via occupational or residential uses, or both.

The assessments are open for comments until 13 July. Three trade bodies – the American Coatings Association (ACA), American Chemistry Council (ACC) and Household and Commercial Products Association (HCPA) – have said they are coordinating a response, with the ACC "conducting a technical assessment to further comment".

Isothiazolinones have come under regulatory pressure due to skin sensitisation concerns.

In Europe, the paint industry in particular is worried that low specific concentration limits (SCLs) for the chemicals could soon make them effectively useless as preservatives; an issue that is due to be addressed with a systematic analysis of the substances' skin sensitisation potential.

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